

TRANSCRIPT OF PROCEEDINGS

SUPREME COURT OF THE UNITED STATES

RECORDING BOOK NO.

NO. 712

RECORDING OF DEEDS

THE SUPREMACY OF THE CONSTITUTION

OFFICIAL RECORD OF THE PROCEEDINGS OF THE SUPREME COURT OF THE UNITED STATES
IN THE MATTER OF THE SUPREMACY OF THE CONSTITUTION

(24,456)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 712.

FREDERICK W. ELLIS, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print
Placita	<i>a</i>	1
Petition	<i>d</i>	2
Exhibit A—Evidence before Interstate Commerce Commis- sion	23	20
Testimony of H. C. Sausser.....	24	20
W. C. Maxwell.....	58	34
L. B. Patterson.....	133	64
Affidavit of G. R. Williams.....	163	76
Testimony of C. A. Charter.....	167	77
Mark T. Adamson.....	177	81
Frederick W. Ellis.....	195	89
Answer	270 ^{1/2}	120
Exhibit A—Order of Interstate Commerce Commission of February 27, 1913, in the matter of private cars	290	131
Decree	302	137
Petition for appeal, November 16, 1914.....	310	142
Assignment of errors.....	311	143
Order of Judge Landis denying appeal.....	320	149
Petition for appeal, November 19, 1914.....	323	150
Memorandum as to assignment of errors.....	324	151
Order of Mr. Justice Van Devanter allowing appeal.....	326	151
Bond on appeal.....	329	152
Clerk's certificate.....	332	154

a In the District Court of the United States, Northern District of Illinois, Eastern Division.

31562.

INTERSTATE COMMERCE COMMISSION

VS.

FREDERICK W. ELLIS.

Mr. Charles F. Clyne, United States District Attorney for Petitioner.

Mr. Frank B. Kellogg, Mr. Cordenio A. Severance, Mr. Robert E. Olds, Mr. Alfred R. Urion, and Mr. C. J. Faulkner, Jr., Attorneys for Respondent.

b Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery Sitting, at the United States Court-room, in the City of Chicago, in said District and Division, Before the Honorable Kenesaw M. Landis, United States District Judge for said Northern District of Illinois, on Monday, the Sixteenth Day of November, Being One of the Days of the November Term of said Court, Begun Monday, the Second Day Thereof, in the Year of Our Lord One Thousand Nine Hundred and Fourteen, and of the Independence of the United States of America the One Hundred and Thirty-ninth Year.

Present: Hon. Kenesaw M. Landis, Judge of said Court, Presiding; John J. Bradley, United States Marshal for said District, and T. C. MacMillan, Clerk of said Court.

c In the District Court of the United States for the Northern District of Illinois, Eastern Division.

31562.

INTERSTATE COMMERCE COMMISSION

VS.

FREDERICK W. ELLIS.

Be it remembered, That heretofore to-wit: on the fourth day of February, 1914, came the petitioner in the above entitled cause by its attorneys and filed in the Clerk's office of said Court, its certain Petition in words and figures following to-wit:

d In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION

v.

FREDERICK W. ELLIS.

Petition for an Order Requiring Defendant to Attend, Testify, and Produce Documentary Evidence Before the Interstate Commerce Commission.

James H. Wilkerson, P. J. Farrell, Attorneys for Petitioner.

e In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION

v.

FREDERICK W. ELLIS.

Petition for an Order Requiring Defendant to Attend, Testify, and Produce Documentary Evidence Before the Interstate Commerce Commission.

To the honorable the judges of the District Court of the United States for the Northern District of Illinois:

The Interstate Commerce Commission, the above-named petitioner, brings this, its petition, against Frederick W. Ellis, of Chicago, in the State of Illinois, the above-named defendant, and thereupon complains and says:

That your petitioner is an administrative tribunal, organized and existing under and by virtue of an act entitled "An act to regulate commerce," approved February 4, 1887, as amended;

That Armour & Company is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, and engaged in the shipment among the several States and Territories of the United States in interstate commerce of different kinds of *f* freight articles, including fresh meats and packing house products, over lines of railroad operated by common carriers subject to said act, among said States and Territories as aforesaid;

That Armour Car Lines is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, and engaged in furnishing refrigerator cars for such shipments, and in furnishing ice and performing refrigeration services in connection with the transportation of said shipments;

That by section 1 of said act, any unreasonable charge made for the transportation, as aforesaid, of such shipments, or for any service connected therewith, is prohibited and declared to be unlawful, and common carriers subject to said act are required to furnish trans-

portation, which, as defined in said section 1, includes the furnishing of refrigerator cars and ice and the performance of the refrigeration services, above mentioned.

That by section 2 of said act it is provided:

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

That in section 3 of said act it is provided:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

That in section 15 of said act it is provided:

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

h That in section 12 of said act it is provided:

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the

enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts [now district courts] of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

That in section 13 of said act it is provided:

* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money.

That in section 15 of said act it is further provided:

That whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opin-

ion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

That prior to the institution by it of the proceeding hereinafter mentioned said Commission, by reason of the premises herein described and because of evidence adduced at said hearing, concluded it was its duty to ascertain whether, through stock ownership or by some other means to your petitioner unknown, said Armour & Co., was controlling said Armour Car Lines and using the same as a device to obtain concessions from the published rates of transportation on its said shipments from said carriers, or to obtain rates of transportation on its said shipments which were less than those contemporaneously applied to the transportation of like shipments of its competitors, or to obtain for itself undue and unreasonable advantage which subjected such competitors to undue and unreasonable prejudice and disadvantage; or whether said Armour Car Lines was receiving from said common carriers for furnishing refrigerator cars and ice and for performing refrigeration services, as aforesaid, unreasonable compensation, which inured to the benefit of said Armour & Co., by reason of which the provisions of sections 1, 2, 3, and 15 of said act, above quoted, or any of them, had been and were being violated:

That thereupon said Commission, in accordance with authority conferred upon it by section 13 of said act, instituted a proceeding of inquiry and investigation, and in that connection made and duly served upon certain common carriers, corporations and persons, including said Armour & Co. and said Armour Car Lines, the following order and supplemental orders:

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 5th Day of June, A. D. 1912.

[Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.]

No. 4906.

In the Matter of Private Cars.

It appearing from complaint now on file with the Commission that the allowances paid by carriers subject to the act to regulate commerce for the use of private cars, the practices governing the handling and icing of such cars, and the minimum carload weights applicable to the commodities shipped therein, are unjust, unreasonable, unduly discriminatory, and otherwise in violation of the act to regulate commerce and the acts amendatory thereof or supplementary thereto,

It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by this Commission on its own motion into and concerning the practices of all carriers by railroad subject to the act to determine whether such allowances, practices or minimum carload weights are unjust, unreasonable or unduly discriminatory or otherwise in violation of said act with a view to the issuance of such order or orders as may be necessary to correct discriminations and to make applicable reasonable weights.

It is further ordered, That all carriers by railroad subject to said act be made parties respondent to this proceeding, and that copies of this and any subsequent order entered herein be served upon said respondents.

By the Commission:

[SEAL.]

JOHN H. MARBLE,

Secretary.

n

Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 8th Day of October, A. D. 1912.

[Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, Commissioners.]

No. 4906.

In the Matter of Private Cars.

Supplemental Order.

It appearing that there is much complaint from growers of fruits and vegetables, and dealers in fish, shipping these articles from

points on the line of the Atlantic Coast Line Railroad Company in North Carolina to points north and east, on its own line and connections, such as Washington, D. C., Baltimore, Md., Philadelphia, Harrisburg and Pittsburgh, Pa., New York, Albany and Buffalo, N. Y., Providence, R. I., and Boston, Mass., that the said carriers constantly fail to furnish an adequate and prompt supply of refrigerator cars suitable for the transportation in question, and likewise fail to perform said transportation with reasonable expedition, by reason of which inadequacies in equipment and service the shippers of these commodities as aforesaid are subjected to substantial and irreparable damage:

It is ordered, That a hearing or hearings be had with respect to the above-stated matters, in connection with the general investigation now under way before the Commission in the proceeding entitled "In the Matter of Private Cars," at such times and places as the Commission may hereafter designate.

It is further ordered, That a copy of this order be served upon the Atlantic Coast Line Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Washington Southern Railway Company; The Pennsylvania Railroad Company; The New York, New Haven & Hartford Railroad Company; The New York Central & Hudson River Railroad Company; The Delaware, Lackawanna & Western Railroad Company; Erie Railroad Company; West Shore Railroad Company; Boston & Albany Railroad Company; Boston & Maine Railroad; Lehigh Valley Railroad Company; and the Baltimore & Ohio Railroad Company.

By the Commission:

(Signed)

JOHN H. MARBLE,

Secretary.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 15th Day of September, A. D. 1913.

[Edgar E. Clark, Judson C. Clements, Charles A. Prouty, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, John H. Marble, Commissioners.]

No. 4906.

In the Matter of Private Cars.

Second Supplemental Order.

It appearing that on the 5th day of June, 1912, an order in the above-entitled investigation was entered, reading as follows:

"It appearing from complaint now on file with the Commission that the allowances paid by carriers subject to the act to regulate commerce for the use of private cars, the practices governing the handling and icing of such cars, and the minimum car-load weights applicable to the commodities shipped therein,

are unjust, unreasonable, unduly discriminatory and otherwise in violation of the act to regulate commerce and the acts amendatory thereof or supplementary thereto;

"It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by this commission on its own motion into and concerning the practices of all carriers by railroad subject to the act to determine whether such allowances, practices, or minimum carload weights are unjust, unreasonable, or unduly discriminatory or otherwise in violation of said act with a view to the issuance of such order or orders as may be necessary to correct discriminations and to make applicable reasonable weights.

"It is further ordered, That all carriers by railroad subject to said act be made parties respondent to this proceeding, and that copies of this and any subsequent order entered herein be served upon said respondents."

It further appearing that on the 8th day of October, 1912, a supplemental order in the above-entitled case was entered, reading as follows:

"It appearing that there is much complaint from growers of fruits and vegetables and dealers in fish shipping these articles from points on the line of the Atlantic Coast Line Railroad Company in North Carolina to points north and east, on its own line and connections, such as Washington, D. C., Baltimore, Md., Philadelphia, Harrisburg, and Pittsburgh, Pa., New York, Albany, and Buffalo, N. Y., Providence, R. I., and Boston, Mass., that the said carriers constantly fail to furnish an adequate and prompt supply of refrigerator cars suitable for the transportation in question, and likewise fail to perform said transportation with reasonable expedition, by reason of which inadequacies in equipment and service the shippers of these commodities as aforesaid are subjected to substantial and irreparable damage;

"It is ordered, That a hearing or hearings be had with respect to the above-stated matters, in connection with the general investigation now under way before the Commission in the proceeding entitled 'In the Matter of Private Cars,' at such times and places as the Commission may hereafter designate."

And it further appearing that certain individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce are necessary parties to this proceeding;

It is ordered, That all individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce be, and they hereby are, made parties respondent to this proceeding.

By the Commission:

[SEAL.]

GEORGE B. MCGINTY, *Secretary*.

3 That thereafter on, to wit, the 22d day of January, 1914, said Commission, pursuant to said orders, held a special hearing presided over by one of its members, Commissioner Charles C.

McChord, at the city of Chicago in the State of Illinois, for the purpose of inquiring into and examining the matters and things above set forth; that at said hearing, in response to a subpoena served upon him, Frederick W. Ellis, the above-named defendant, appeared, and, after being duly sworn, stated that he was then vice president and general manager of said Armour Car Lines and had been such for about 10 years immediately prior to said January 22, and that one G. B. Robbins was the president of said Armour Car Lines; whereupon said Ellis was asked certain questions, which he was required by said presiding commissioner to answer, and also asked to furnish certain documentary evidence, which he was required by said commissioner to do, but upon advice of counsel he declined to answer said questions, or any of them, and also declined to furnish said documentary evidence, or any of it.

At said special hearing said Commission was represented by one of its attorneys, George P. Boyle, while counsel for said witness were: C. A. Severance, S. W. Burr, A. R. Urion, and C. J. Falkner, Jr., and, as shown in and by Exhibit A hereto attached and hereby made a part hereof, each of the questions said witness so declined to answer and the documentary evidence he so declined to furnish, together with reasons advanced in support of such declinations and
4 other pertinent and explanatory matters, are as follows:

Mr. BOYLE: Yes, sir. Who is Mr. G. B. Robbins?

Mr. ELLIS: President of Armour Car Lines.

Mr. BOYLE: What position does he hold with Armour & Company?

Mr. SEVERANCE: Now I desire at this time to enter an objection to this question, and I shall object to any similar questions, on the ground that the question relates to the private business and affairs of Armour Car Lines; that, neither under the act of Congress nor under the orders which have been entered in this proceeding, has this Commission any jurisdiction, right or authority to inquire into such matters or to demand the information which the question calls for, and with all due respect to the Commission, we are constrained to advise the witness that he is not required to and ought not to answer the question.

I want to make that objection and make it in a timely way so that counsel may be advised of our position, and I so advise Mr. Ellis.

Commissioner McCHORD: The objection will be overruled and the witness will be required to answer.

Mr. SEVERANCE: And the witness will, if he takes advice of his counsel, still decline to answer.

Mr. ELLIS: I must decline to answer on advice of counsel.

(Exhibit A, pp. 920-921.)

Mr. BOYLE: What position does Mr. J. Ogden Armour hold with Armour & Company, or what is his connection with Armour & Company.

Mr. SEVERANCE: I make the same objection on the same grounds, and advise the witness in the same way.

5 Commissioner McCHORD: The witness will answer the question.

Mr. ELLIS: I refuse to answer on advice of counsel.

(Exhibit A, p. 921.)

Mr. BOYLE: Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relations with or to Armour & Company?

Mr. SEVERANCE: I make the same objection and give the same advice to the witness.

Commissioner McCHORD: The witness will answer the question.

Mr. ELLIS: I decline to do so, on advice of counsel.

(Exhibit A, p. 921.)

Mr. BOYLE: How was title to the cars held by Armour & Company and by Armour Packing Company passed to Armour Car Lines?

Mr. SEVERANCE: I make the same objection to that question as to the other questions and give the same advice to the witness.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline, on advice of counsel.

(Exhibit A, pp. 922-923.)

Mr. BOYLE: How were the cars of Armour Car Lines, the corporation that began in March, 1901, acquired?

Mr. SEVERANCE: I make the same objection and give the same advice.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline, on advice of counsel.

(Exhibit A, p. 923.)

Mr. BOYLE: I understand then that Armour Car Lines is unwilling to state under what circumstances or conditions it acquired the equipment with which it does business

6 Mr. SEVERANCE: I make the same objection to that question as to the others, and give the same advice to the witness.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline to answer, on advice of counsel.

(Exhibit A, p. 923.)

Mr. BOYLE: What proportion of your cars out of Kansas City are used by the Fowler Packing Company?

Mr. ELLIS: I should say approximately 25 per cent.

Mr. BOYLE: Who are the officers of the Fowler Packing Company?

Mr. SEVERANCE: I object to that on the same ground—

Mr. BOYLE: Well, Poor's Manual will show that.

Commissioner McCHORD: Well, ask your question and the witness will be required to answer that, and you are subject to exception.

Mr. SEVERANCE: I make the same objection to that as to the other questions, your honor, and give the same advice to the witness.

Commissioner McCHORD: Yes.

Mr. BOYLE: And the witness declines to answer?

Mr. ELLIS: I decline to answer.

(Exhibit A, p. 926.)

Mr. BOYLE: Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Company for furnishing cars at different points, called for by any contract that exists?

Mr. SEVERANCE: Just a moment. Is that one of the questions that you were going to ask in lieu of a subpoena duces tecum?

7 Mr. BOYLE: No, I am asking the witness now if he will furnish us with a contract. He has testified that he has such contracts.

Mr. SEVERANCE: No, he says he has not, as I understood his last answer.

Mr. BOYLE: He says he has not them with him, but that Armour Car Lines has such contracts with Armour & Company.

Mr. SEVERANCE: But you spoke to me before the hearing about asking some questions in lieu of a subpoena *decus* [duces] tecum. Is this one of the questions?

Mr. BOYLE: No. I simply intended to supplement the witness's testimony. He says such contracts exist, and I ask that he produce them.

Mr. SEVERANCE: I should object to their production by the witness, but I wanted to get it in the right shape.

Commissioner McCHORD: You gentlemen will have to speak a little bit louder. I cannot hear what you are talking about.

Mr. SEVERANCE: I would advise the witness to decline to produce the contracts.

Commissioner McCHORD: The witness will be required to produce the contracts.

Mr. ELLIS: I must refuse to do so under advice of counsel.

(Exhibit A, pp. 927-929.)

Mr. BOYLE: At East St. Louis, what packing company furnishes the principal tonnage moved in Armour Car Lines cars?

Mr. ELLIS: Armour & Company.

Mr. BOYLE: At Fort Worth?

Mr. ELLIS: The same there.

Mr. BOYLE: At Denver?

8 Mr. ELLIS: I think the name of the house there that we furnish most cars to is the Colorado Packing Company.

Mr. BOYLE: Have you any idea how many cars you furnished Denver in the course of a year?

Mr. ELLIS: No, excepting that it would amount to several hundred.

Mr. BOYLE: Are those cars leased to the Colorado Packing Company?

Mr. ELLIS: No.

Mr. BOYLE: Are they furnished under some understanding or agreement?

Mr. ELLIS: We furnish them on their orders, yes, under an understanding.

Mr. BOYLE: Is that understanding verbal or written?

Mr. ELLIS: Verbal.

Mr. BOYLE: What is the nature of the understanding?

Mr. SEVERANCE: I make the same objection to that and give the same advice to the witness as to the other questions.

Commissioner McCHORD: He may answer.

Mr. ELLIS: I must decline, on advice of counsel.

(Exhibit A, pp. 930, 931.)

Mr. BOYLE: In the next column, Mr. Ellis, under the head of other property appears nothing at all. Did Armour Car Lines own any property other than their rolling stock?

Mr. SEVERANCE: Just a moment. I object to that on the grounds first stated in my objection this evening to the first question.

Commissioner McCHORD: Let him answer.

Mr. SEVERANCE: And I advise the witness that he ought not to answer that question.

9 Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 951.)

Mr. BOYLE: Where are the cars of Armour Car Lines repaired when not repaired in shops of railroads?

Mr. SEVERANCE: I want to state, your Honor, that if this merely involved a question or two for a little information, I do not object to it. But if it is proposed to follow this up in detail and attempt to find out or elicit evidence as to cost of repairs and maintenance of shop, and that sort of thing, I shall object to it, and if counsel will kindly advise me his intention in that regard, I will know whether to object to this. The particular question I would not object to, unless it is a part of a series by which counsel is going to attempt to go into the whole business of Armour Car Lines.

Mr. BOYLE: That is what we are going to do.

Mr. SEVERANCE: I will object to it and give the same advice to the witness as before, for the reasons stated.

Commissioner McCHORD: Answer the question.

Mr. BOYLE: I will state that we want to go into the business of Armour Car Lines in so far as they are engaged in any business affecting transportation, as that term is used in section 1 of the act to regulate commerce, and to that end I think the question asked is relevant and material, and will ask that the Commission direct that it be answered.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline, on advice of counsel.

(Exhibit A, pp. 952-953.)

10 Mr. BOYLE: With who, is settlement made, or by whom is settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Company.

Mr. SEVERANCE: I object to that and advise the witness not to answer the question, the same as before.

Commissioner McCHORD: The same answer.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 962.)

Mr. BOYLE: From whom do Armour Car Lines receive payment directly for refrigeration or icing service performed?

Mr. BURE: Performed for whom, Mr. Boyle?

Mr. BOYLE: Performed for shipments of packing house products generally.

Mr. ELLIS: From the railroads, as a general proposition.

Mr. BOYLE: When it is not received from the railroads from what source is it received?

Mr. ELLIS: We might in some cases bill direct for it against the shipper.

Mr. SEVERANCE: Read that answer. I could not hear it.

(Answer read as above recorded.)

Mr. BOYLE: In what instances would that be done and is it done, Mr. Ellis?

Mr. SEVERANCE: Will you kindly read that question? I could not hear it.

(Question read as above recorded.)

Mr. SEVERANCE: Has the question been answered? Just read him the question.

Mr. ELLIS: I know the question.

Mr. SEVERANCE: Well, we would like to know what the question is. Mr. Urion don't remember it.

(Question re-read as above recorded.)

11 Mr. ELLIS: We bill directly against Armour & Company for ice furnished.

Mr. SEVERANCE: Mr. Ellis, can you speak louder. I am a little bit hard of hearing. I don't hear any of your answers without having them read a second time.

Mr. ELLIS: I will see if I can not.

Mr. SEVERANCE: Will you read that answer please?

(Answer read as above recorded.)

Mr. BOYLE: Is that for all ice furnished Armour & Company or just in certain instances that you so bill direct?

Mr. SEVERANCE: I object to that and advise the witness not to answer that question on the ground first stated in my first objection this evening.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, pp. 962-964.)

Mr. BOYLE: Do Armour Car Lines manufacture all of their own equipment?

Mr. SEVERANCE: I object to that, if your honor please, on the grounds stated in my first objection to-night, and advise the witness that he should not answer the question as it relates to a private matter.

Commissioner McCHORD: The witness will answer the question.

Mr. ELLIS: I decline on advice of counsel.

(Exhibit A, pp. 971-972.)

Mr. BOYLE: Mr. Ellis, the Armour Car Lines were asked by the Interstate Commerce Commission to furnish, and I quote now from the written request, "an income statement showing in detail the credits to income from all sources, and the debits to income of whatever nature, and the total credits and total debits as shown
12 by the books and records of the Armour Car Lines as a corporation, for its last fiscal year."

I now ask for the same statement with this modification, that the Commission desires an income statement showing in detail the credits to income, and the debits to income of whatever nature, and the total credits and total debits as shown by the books of the Armour Car Lines, as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation, as that term is defined in section 1 of the act to regulate commerce. I ask you if such a statement will be furnished?

Mr. SEVERANCE: I don't think that the witness is the proper person to answer that. But just a moment.

I am authorized to state, however, that Armour Car Lines will respectfully decline to furnish that statement as asked, upon the grounds stated in the first objection that I made this evening.

Commissioner McCHORD: Well, the witness will be required to furnish the information and the statement as called for.

Mr. BOYLE: And on advice of counsel——

Mr. SEVERANCE: And I advise the witness to decline to produce the statement.

Mr. ELLIS: I must decline to produce the statement on advice of counsel.

(Exhibit A, pp. 973-975.)

Mr. BOYLE: Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines?

Mr. SEVERANCE: I object on the same ground as the first objection I made this evening.

Commissioner McCHORD: He will answer.

13 Mr. SEVERANCE: And advise the witness not to answer.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, pp. 978-979.)

Mr. BOYLE: Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business?

Mr. SEVERANCE: I will object to that on the same ground.

Commissioner McCHORD: Let him answer.

Mr. SEVERANCE: And give the same advice.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 979.)

Mr. BOYLE: What is done with the cars manufactured by Armour Car Lines?

Mr. SEVERANCE: Same objection.

Commissioner McCHORD: Answer the question.

Mr. SEVERANCE: And the same advice to the witness.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 979.)

Mr. BOYLE: Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines?

Mr. SEVERANCE: Just wait a moment; we make the same objection and give the same advice. It involves the same fundamental question, your honor.

Commissioner McCHORD: Yes. Answer the question.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, pp. 979-980.)

14 Mr. BOYLE: Will you furnish an income statement showing in detail the credits to income and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting and leasing cars, and furnishing icing and refrigeration service?

Mr. SEVERANCE: The same objection and advice to the witness.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 980.)

Mr. BOYLE: Please furnish a statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting and leasing cars, and furnishing icing and refrigeration service.

Mr. SEVERANCE: That is in the shape of a request. Do you want to ask him a question based on that?

Mr. BOYLE: I asked him to please furnish that.

Mr. SEVERANCE: You asked the witness if he will furnish that?

Mr. BOYLE: Yes.

Mr. SEVERANCE: The request or question, whichever it may be termed, is objected to.

Commissioner McCHORD: He is asking the witness to do that.

Mr. SEVERANCE: I beg pardon.

15 Commissioner McCHORD: He is asking the witness to furnish this information.

Mr. SEVERANCE: Yes. I say I will object to it, either as a request or a question whichever it may properly be termed, upon the ground as stated.

Commissioner McCHORD: You seemed to have some doubt as to which it was, and I just wanted to let you understand.

Mr. SEVERANCE: I don't really know which it is.

Commissioner McCHORD: Yes.

Mr. SEVERANCE: It is perfectly polite anyway, whichever way it may be termed. It is all right, there is no objection to that. I advise the witness to decline to furnish the statistics requested.

Mr. BURR: Upon the ground already stated.

Mr. SEVERANCE: Upon the ground already stated repeatedly.

Commissioner McCHORD: The witness will be required to furnish the information and to answer the question.

Mr. ELLIS: I decline on the advice of counsel.

(Exhibit A, pp. 980-982.)

Mr. BOYLE: Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the end of its last fiscal year, and by icing station is meant station at which icing and refrigeration is done.

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes.

Mr. SEVERANCE: I advise Mr. Ellis to decline the request of counsel. My advice is based on the ground stated in my first objection this evening.

Commissioner McCHORD: Let him answer.

16 Mr. ELLIS: I decline on advice of counsel.

(Exhibit A, p. 982.)

Mr. BOYLE: Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by rail, from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes.

Commissioner McCHORD: What year do you refer to?

Mr. SEVERANCE: During which year?

Mr. BOYLE: The last fiscal year.

Mr. SEVERANCE: I make the same objection and give the witness the same advice as I have regarding these other questions, upon the grounds first stated in my first objection this evening.

Commissioner McCHORD: The witness will answer the question and be required to furnish the information.

17 Mr. ELLIS: I must decline to do so on advice of counsel.
(Exhibit A, pp. 983, 984.)

Mr. BOYLE: Will counsel agree that each of the questions embraced in the last question were also asked separately and separately declined?

Mr. BURR: Oh, by all means.

Mr. SEVERANCE: Oh, certainly.

Mr. BOYLE: Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines?

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes, sir.

Mr. SEVERANCE: I make the same objection to the question as I made in the first objection I urged this evening.

Mr. BOYLE: And the same answer of the witness.

Mr. ELLIS: I decline to answer on advice of counsel.

(Exhibit A, p. 984.)

Mr. BOYLE: Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed?

Mr. SEVERANCE: You have two up there. Do you want to put them together or consider them as separate?

Mr. BOYLE: Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour car lines for the last fiscal year after the books were closed; those two requests being made separately.

18 Mr. SEVERANCE: They are objected to separately, and the witness is advised not to furnish the information requested, on the grounds stated in the first objection made this evening.

Commissioner McCHORD: The witness will be required to answer the question and furnish the information.

Mr. ELLIS: I decline to answer, on advice of counsel.

(Exhibit A, p. 985.)

Mr. BOYLE: Mr. Ellis, I hand you the report made by your company in answer to interrogatories propounded by the Commission, that particular answer being the answer to question 10 on Form No. 6—

Mr. SEVERANCE: Is that in your exhibits here?

Mr. BOYLE: No, it is one of the reports. And covering what years, Mr. Ellis. [?]

Mr. SEVERANCE: The paper shows for itself.

Mr. BOYLE: I have not introduced it.

Commissioner McCHORD: No, but you are asking him about it.

Mr. BOYLE: He has it in his hand and can tell me what three years they are.

Mr. ELLIS: This statement shows that—

Mr. SEVERANCE: What years does it purport to cover?

Mr. BOYLE: What years, is all I want to know.

Mr. ELLIS: It refers to years ending October 22, 1910, November 4, 1911, and November 2, 1912.

Mr. BOYLE: The question referred to asked for information from the date of incorporation of Armour Car Lines. I ask you now if you will give us information to the extent that you have already given it for those three years, to cover the period from the date of incorporation of Armour Car Lines.

19 Mr. SEVERANCE: I object to that and advise the witness to decline to furnish the additional information on the grounds stated in our first objection.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I must decline, on advice of counsel.

(Exhibit A, pp. 985, 986.)

Mr. BOYLE: Mr. Ellis, why did Armour Car Lines report the last three years and not any further? Why did they stop at 1910.[?]

Mr. SEVERANCE: Just wait one minute. I make the same objection and give the same advice, and advise counsel that I shall object to all further questions on that subject.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline, on advice of counsel.

(Exhibit A, pp. 986, 987.)

Commissioner McCHORD: What did the interrogatory call for?

Mr. BOYLE: I was trying to avoid getting it all into the record. I will read—

Commissioner McCHORD: No. Just how many years did you call for?

Mr. BOYLE: Since the date of incorporation of the Armour Car Lines.

Commissioner McCHORD: Now then, he only furnished three years?

Mr. BOYLE: He only furnished three years, 1910, 1911 and 1912.

Commissioner McCHORD: That makes it clear.

Mr. BOYLE: And I want to know why he stopped in 1910 and why we can not get it all.

Commissioner McCHORD: You asked him that, and he declined to answer.

Mr. BOYLE: Yes. If your Honor please, I can go no further in my examination of Armour Car Lines. I understand that
20 the witness Ellis represents the policy of the Car Lines, and that none of his declinations are because of lack of information.

Mr. SEVERANCE: That is correct.

Mr. BURR: That is our understanding.

Mr. SEVERANCE: That may be so taken.

(Exhibit A, pp. 987-988.)

That in pursuance of its duty under the law it was incumbent

upon your petitioner, to enable it to perform the functions for which it was created, to procure the information sought by each and every of the questions so put to said witness Ellis and which he so declined to answer, and also to obtain from him the documentary evidence he so declined to furnish.

That your petitioner is of the opinion that the said questions and each of them are, and that said documentary evidence is, relevant and material to the matter under investigation, and that an answer to each of said questions and the production of said documentary evidence are necessary in order to enable your petitioner to discharge its duty and execute and enforce the provisions of said act to regulate commerce, and to inform your petitioner as to the manner and method in which the business of the said common carriers is conducted, and to enable your petitioner to obtain full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

21 That subsequent to said proceedings, and prior to the verification of this petition, the Attorney General of the United States, at the request of your petitioner, instructed the United States attorney for the Northern District of Illinois, as your petitioner is informed and believes, to present this petition and institute before the proper court and to prosecute by necessity proceedings for the enforcement of the provisions of the act to regulate commerce as amended, and to invoke the aid of the court in requiring the attendance and testimony and production of said documentary evidence by said recalcitrant witness and the answers to each and every of the questions hereinbefore detailed, which said witness declined to answer, pursuant to the provisions of said act to regulate commerce as amended.

Wherefore your petitioner prays that an order or orders be made requiring the attendance before your petitioner of said witness, at a time and place to be fixed by said Commission, and the making by him of a full answer to each of the questions respectively declined to be answered by him as aforesaid, and to any and all other pertinent questions relating to the subject matter aforesaid which said Commission may require him to answer, and the production by him of the documentary evidence covered by said questions, and any and all other pertinent documentary evidence relating to said subject matter which said Commission may require him to furnish, and for such other and further relief as may be just and proper in the premises.

THE INTERSTATE COMMERCE COM-
MISSION.

By GEORGE B. MCGINTY,

The Secretary Thereof, Thereunto Duly Authorized.

22 CITY OF WASHINGTON,
District of Columbia, ss:

I, Charles C. McChord, on oath depose and say, that I am a member of the Interstate Commerce Commission and make this affidavit

on behalf of said Commission; that I have read the foregoing petition and know the contents thereof, and that the same is true.

CHARLES C. McCHORD.

Subscribed and sworn to before me, a notary public within and for the District of Columbia this 31st day of January, A. D. 1914.

GEO. F. GRAHAM,
Notary Public.

JAMES H. WILKERSON,
*United States Attorney, Northern District of
Illinois, Chicago, Ill.;*

P. J. FARRELL,
*Solicitor of Interstate Commerce
Commission, Washington, D. C.,
Attorneys for Petitioner.*

(Endorsed:) Filed Feb. 4, 1914. T. C. MacMillan, Clerk.

23

EXHIBIT "A" TO PETITION.

D. C., 31562.

I. C. C.

vs.

FREDERICK W. ELLIS.

Before the Interstate Commerce Commission.

Docket No. 4906.

In the Matter of Private Cars.

At Chicago, Illinois. Date January 22, 1914.

24

CHICAGO, ILL., January 22nd, 1914.

Met pursuant to adjournment at 10:00 A. M.

Present: Parties as before.

H. C. SAUSSER was called as a witness, and having been duly sworn, testified as follows:

Mr. BOYLE: What is your full name?

Mr. SAUSSER: Harry C. Sausser.

Mr. BOYLE: What position do you occupy with the Wabash Railroad?

Mr. SAUSSER: Trainmaster of Terminals at Detroit, Mich.

Mr. BOYLE: How far from Detroit, Mich. is Delray?

Mr. SAUSSER: About three miles.

Mr. BOYLE: Southeast, or south?

Mr. SAUSSER: It would be west.

Mr. BOYLE: Is it west?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: There is an icing station at Delray?

Mr. SAUSSER: There is.

Mr. BOYLE: What is the name of the icing station?

Mr. SAUSSER: It is called the Delray icing station.

Mr. BOYLE: By whom is it operated?

24½ Mr. SAUSSER: Operated by Swift & Company.

Mr. BOYLE: Is it located upon the property of the Wabash Railroad?

Mr. SAUSSER: I think it is.

Mr. BOYLE: Do you know whether or not it is operated under lease?

Mr. SAUSSER: No, sir, I do not know that.

Mr. BOYLE: What document is there vesting title in Swift & Company to the property?

Mr. SAUSSER: I could not tell you, sir; I am not familiar with the details.

Mr. BOYLE: Who is familiar with the details in that respect?

Mr. SAUSSER: I expect, Mr. Maxwell, at St. Louis.

Mr. BOYLE: Any contract that may have been entered into between the Wabash and the concern or concerns operating the Delray icing station would be within the cognizance of Mr. Maxwell?

Mr. SAUSSER: I believe it would. I am not positive.

Commissioner McCHORD: Have you the lease and contract, or a copy?

Mr. BOYLE: No. Our information is there is no contract
25 since 1889.

Commissioner McCHORD: Was there a contract in 1889?

Mr. BOYLE: I have a copy of it, yes sir.

Commissioner McCHORD: Have they been operating under that same contract since?

Mr. BOYLE: The contract expired in 1904, and they have been operating just under a common understanding of some kind, which seems to be almost intangible.

Commissioner McCHORD: Perhaps counsel will know about that.

Mr. VEEDER: There is a subsequent contract which is now in force, which was made in 1911, which superseded the contract which apparently you have.

Mr. BOYLE: We have not that contract.

Commissioner McCHORD: Have you a copy of that?

Mr. VEEDER: No, I have not it here. I have in my office.

Commissioner McCHORD: Can you furnish us the contract?

Mr. VEEDER: I will be glad to do that.

Commissioner McCHORD: Then you may furnish it.

Mr. BOYLE: The old contract was No. 855, and that is the last one of which we have record.

Commissioner McCHORD: Have you that contract?

Mr. BOYLE: We have a copy of it.

Commissioner McCHORD: Put that in as an exhibit.

26 Mr. BOYLE: Do you know, Mr. Sausser, under what arrangement the station was operated in so far as affected the

relations between Swift & Company and the railroad, from the expiration of the old contract in 1894 to the execution of the new contract referred to now by Mr. Veeder, and said to have been entered into in 1911.

Mr. SAUSSER: I do not, sir. I have been in Detroit about a year. I have never seen any of the contracts and do not know under what condition the plant is operated.

Mr. BOYLE: Do you think Mr. Maxwell would be able to tell us.

Mr. SAUSSER: I believe he would. I am not positive of that.

Mr. BOYLE: I offer the copy of the old contract referred to, that contract being No. 855 of the Wabash Railroad Company; contract with Swift & Company, Chicago, Ill., re-icing refrigerator cars at Delray, Mich., which takes effect April 1st, 1889.

(The document so offered and identified, was received in evidence and thereupon marked Commission's Exhibit No. 10, received in evidence January 22nd 1914, and is attached hereto.)

27 Commissioner McCHORD: Do counsel know whether the parties operated under that contract until the new one referred to was made?

Mr. VEEDER: We operated under that contract for only five years, and at the end of each five year period there was a new contract made, the last one being in 1911.

Commissioner McCHORD: Was it a renewal of this old contract or a new one?

Mr. VEEDER: It was a new contract, and this was the first of the contract and ran for five years, and then at the end of that period a new contract was made practically and generally in the same terms, but with some variations.

Commissioner McCHORD: Can you furnish us copies of all those contracts?

Mr. VEEDER: I will be very glad to if I have them, and I think I have.

Mr. BOYLE: I have here a copy of a letter signed by Swift & Company, by Murphy, dated June 23, 1894, which reads as follows:

"CHICAGO, June 23, 1894.

28 Sumner Hopkins, A. G. F. A., Wabash Railroad, Royal Insurance Building, City.

DEAR SIR: Referring to agreement with General Manager Hays of your company, dated November 30th, 1888, covering icing of refrigerator cars for the account of your company for a term of five years beginning April 1st, 1889. The above agreement expired on the 1st day of April 1894, and we write to advise you that commencing June 1st, 1894, we will ice cars at our Detroit icing station for the account of the Wabash R. R. Co. and will name you rate of \$2.50 per ton for actual amount of ice used in each car, with a minimum charge of \$2.50 per car.

Kindly acknowledge receipt of this advice, and oblige,

Yours respectfully,

SWIFT & COMPANY,
By MURPHY."

Prior to that letter, on April 9, 1906, there apparently had been some correspondence between the Auditor of the Wabash Railroad and Swift & Company, respecting icing bills for ice furnished at this station, for on that day Swift & Company wrote to Mr. T. J. Tobin, Auditor of the Wabash Railroad, St. Louis, Mo., as follows:

29 "DEAR SIR: Referring to your letter of the 7th, saying that we have been making bills against the Wabash Ry. Co. for ice furnished at Delray at the rate of \$2.50 per ton and that you presume this same rate per ton will be effective for the coming season.

We can give you no assurance at this writing that \$2.50 per ton rate will apply on business this season, however, should any change be made you will be advised promptly.

Yours respectfully,

SWIFT & COMPANY,
Per J. J. M.

Ice Dept.
J. J. M.—J. W."

That is two years after the expiration of the old contract.

Mr. VEEDER: The date of that was April 9th, 1896?

Mr. BOYLE: 1906?

Mr. VEEDER: Do you offer those letters?

Mr. BOYLE: Yes, I think they should be copied in the record at this place, if the Commission please.

30 That contract appears to have expired in April 1894.

In that same year, August 27th, Swift & Company wrote Mr. Charles M. Hays, Vice-President & General Manager of the Wabash at St. Louis, as follows:

"Referring to your letter of August 10th, and returning our icing bill for month of May, as before stated this icing bill is made out strictly in accordance with icing agreement with your company, and which expired in April 1894.

We herewith return the May icing bills, and will very much appreciate your arranging for prompt settlement of same.

Yours respectfully,
(Signed)

SWIFT & COMPANY."

Later, on August 29, 1894, Mr. Charles M. Hays, Vice-President and General Manager of the Wabash, wrote to Mr. Knight, his Freight Traffic Manager, regarding these bills, under date of August 29, 1894, as follows:

"Returning the attached correspondence relative to bill of Messrs. Swift & Co. for icing at Delray during the month of May.

"I understand the charges made are on the basis of the rates authorized by the Central Traffic Association for icing of cars in Central Traffic Association territory, which is \$2.50 per ton

31 for ice, including salt and labor. I also understand that in any event these charges are not assumed by the Railroad Company, but are added to the charges on the freight. Under the

circumstances I see no reason for not passing the attached bill for voucher, and continuing to do so as heretofore."

I desire to call particular attention to that last paragraph.

"Signed, Charles M. Hays, Vice-President and General Manager."

Our purpose in getting those into the record at this time is to show that the railroad is not very much concerned with the amount of the icing bill, as long as the shipper pays it. I think that appears from this correspondence.

Mr. SAUSSER, how long have you been at Delray, Detroit?

Mr. SAUSSER: One year.

Mr. BOYLE: How long?

Mr. SAUSSER: One year.

Mr. BOYLE: Prior to that time where were you?

Mr. SAUSSER: Moberly, Missouri.

Mr. BOYLE: Is there an icing station at Moberly, Missouri?

32 Mr. SAUSSER: Yes sir.

Mr. BOYLE: By whom is that operated?

Mr. SAUSSER: By the Wabash Railroad Company.

Mr. BOYLE: How long were you at Moberly, Mr. Sausser?

Mr. SAUSSER: About a year, a year and three months.

Mr. BOYLE: What were your duties at Moberly?

Mr. SAUSSER: General Yardmaster.

Mr. BOYLE: In the discharge of those duties, did you exercise supervision over the icing there?

Mr. SAUSSER: I did not, no sir.

Mr. BOYLE: Who did?

Mr. SAUSSER: The storekeeper located at that station.

Mr. BOYLE: What was his name?

Mr. SAUSSER: Mr. G. W. Bush.

Mr. BOYLE: Is he still there?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: Does he still retain the same title?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: You are not familiar then with the operation of the railroad owned icing station at Moberly?

Mr. SAUSSER: I did not get your question.

33 Mr. BOYLE: You are not familiar with the railroad owned icing station at Moberly?

Mr. SAUSSER: I am familiar with the mode of operation, yes sir, thoroughly familiar with it.

Mr. BOYLE: Do you know from what source it secures its supply of ice?

Mr. SAUSSER: Yes sir; they have a small lake that is situated right within twenty feet of the icing station. If they have sufficient cold weather to make ice thick enough to cut it, they cut it there, if they don't, they haul it in there from points in Iowa.

Mr. BOYLE: What year were you at Moberly, Mr. Sausser?

Mr. SAUSSER: I was at Moberly in 1912.

Mr. BOYLE: All of 1912?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: During that year, from what source was the ice obtained?

Mr. SAUSSER: In 1912, they cut the ice, in the winter of 1911 and 1912, at Moberly.

Mr. BOYLE: Do you know how much they cut?

Mr. SAUSSER: No sir, I do not.

Mr. BOYLE: You don't know how much they stored?

Mr. SAUSSER: No, sir, they filled the ice house there, and I
34 should judge put in the neighborhood of one hundred thousand tons outside in a building—

Commissioner McCHORD: What is the capacity of the ice house?

Mr. SAUSSER: I should judge the ice house would hold 200,000 tons.

Mr. BOYLE: How much?

Mr. SAUSSER: 200,000 tons—20,000 tons. I got too many
noughts on there.

Mr. BOYLE: Who is the Carondelet Ice Manufacturing Company?

Mr. SAUSSER: I do not know, sir.

Mr. BOYLE: Under what circumstances would you get ice from the Anheuser-Busch Brewing Association at Moberly?

Mr. SAUSSER: The Purchasing Agent, Mr. Frier, at St. Louis, would purchase it and forward it to Moberly, in case the supply at Moberly had been exhausted.

Mr. BOYLE: Who is the Hutmacher Ice Company?

Mr. SAUSSER: I could not tell you, sir.

Mr. BOYLE: I notice that about half of the supply obtained at Moberly in 1912, according to the report of the Wabash Railroad, came from this ice company.

Mr. SAUSSER: That might have been possible, sir.

Mr. BOYLE: Who is the Bloomer Cold Storage Company?

35 Mr. SAUSSER: I could not tell you, sir.

Mr. BOYLE: Are you familiar with the operating cost of harvesting and storing this ice?

Mr. SAUSSER: No, sir.

Mr. BOYLE: Would your general storekeeper be?

Mr. SAUSSER: I expect he would be, yes sir.

Mr. BOYLE: Does he keep accounts for the ice harvested?

Mr. SAUSSER: The ice manufactured at Moberly would be harvested by the Maintenance of Way Department. I expect the account is transferred from that department to the Purchasing Department. I am not positive about that, sir, but the ice is harvested by the Maintenance of Way Department. Mr. Sheehan is at the head of that at Moberly, Missouri, but I think the account is transferred from that to the Purchasing Department.

36 Mr. BOYLE: The general storekeeper keeps a record of all the ice in and all the ice out?

Mr. SAUSSER: Yes.

Mr. BOYLE: And the parties to whom it is furnished?

Mr. SAUSSER: Yes.

Mr. BOYLE: Does he keep a record of the ice supplied to passenger trains and used on engines?

Mr. SAUSSER: No. Ice supplied to passenger trains at Moberly is purchased at Moberly. It is manufactured ice, as a general rule;

sometimes it is shipped in there from other points, but generally purchased at Moberly.

Mr. BOYLE: Is that just purchased as the occasion arises, and just in those quantities.

Mr. SAUSSER: Yes, sir. A wagon drives up there and unloads a ton or two of ice, whatever is required.

Mr. BOYLE: From what source do they get the ice used around the station, and on engines.

Mr. SAUSSER: Some of the engines get theirs from the supply furnished at the depot for the passenger equipment and some of the freight engines get their supply from what would be harvested off the pond, or what would be shipped into the ice house in case
37 of failure or shortage of the crop.

Mr. BOYLE: In other words, they get it from the Moberly ice house?

Mr. SAUSSER: Yes.

Mr. BOYLE: Are separate records kept of the amounts so obtained by engine crews?

Mr. SAUSSER: Yes sir.

Mr. BOYLE: You think then that the records of the storekeeper at Moberly will show in detail?

Mr. SAUSSER: The records of the storekeeper should show the amount of ice used by the engines at Moberly.

Mr. BOYLE: Mr. Sausser, who performs the actual refrigerating service at Moberly, whenever it is necessary, the storekeeper or icing foreman, or whom?

Mr. SAUSSER: The icing foreman under the supervision of the storekeeper, who would be under the storekeeper's jurisdiction.

Mr. BOYLE: Mr. Sausser, does the icing station at Delray come under your supervision in any way?

Mr. SAUSSER: No way at all, only the operating end of the traffic there.

Mr. BOYLE: Under whose jurisdiction, under what official
38 of the Wabash, is the Swift & Company's icing station at Delray operated.

Mr. SAUSSER: Under no official of the Wabash. It is operated by an official of Swift & Company.

Mr. BOYLE: What representative of your company is there?

Mr. SAUSSER: No representative at all, sir.

Mr. BOYLE: When cars are to be iced or re-iced at Delray, what is the actual procedure, how are they handled?

Mr. SAUSSER: Cars arriving to be iced at Delray, the bill of lading carries the notation telling the amount and under what conditions cars are to be iced. For instance, ice to full capacity and 8, 10 or 12 per cent salt, whichever it may be. And the car arrives and the clerk handling the bill would immediately issue an icing order, and this icing order would go to Swift & Company's ice house, and we would switch the car to the ice house and Swift & Company would perform the duties, and as soon as the car was iced we would proceed with it to the destination of the car.

Mr. BOYLE: How do you know that Swift & Company would perform the duties?

Mr. SAUSSER: We do not know positively, sir.

Mr. BOYLE: What notation is made on the waybill after
39 the car is iced?

Mr. SAUSSER: The car has been iced at Delray. Sometimes the notation is made.

Mr. BOYLE: And a charge is made for that?

Mr. SAUSSER: I expect so. That is handled through the agent.

Mr. BOYLE: And that of course, is added to the freight rate and collected at destination by the railroad?

Mr. SAUSSER: I do not know anything about that.

Mr. BOYLE: Well, I think that fact is conceded.

Commissioner McCHORD: Who makes the notation on the waybill that the car has been iced?

Mr. SAUSSER: We have a stamp——

Commissioner McCHORD: Is it your agent?

Mr. SAUSSER: We make a notation on the waybill generally that——

Commissioner McCHORD: I simply want to know whether you do it or Swift & Company.

Mr. SAUSSER: We do it, sir. You understand, sir, that is not in all cases and all waybills. On meat shipments there is generally no notation on them. The bill carries instructions to ice at
40 Moberley, Decatur or Delray, and the car is iced accordingly.

Mr. BOYLE: Mr. Sausser, have you with you a copy of the icing order that you issue to Swift & Company?

Mr. SAUSSER: I have not.

Mr. BOYLE: Could you verbally sketch off briefly what that order states?

Mr. SAUSSER: Yes, we make that out on an ordinary slip of paper and we say, "S. R. L. 20270, ice full capacity, 10 per cent salt." And we say "P. F. V. 10242, ice 1,800 pounds, no salt." We say, "Armour & Company, 7024, ice to full capacity, crushed ice, 10 per cent salt."

Mr. BOYLE: Who determines the amount of ice that is actually put in to the bunkers?

Mr. SAUSSER: Swift & Company's representatives.

Mr. BOYLE: They bill the Wabash then for the amount that they state has been put in the car?

Mr. SAUSSER: I could not tell you, sir.

Mr. BOYLE: There is no official of the Wabash Railroad who checks, weighs or otherwise tallies the amount of ice going into these bunkers?

Mr. SAUSSER: No, sir.

Mr. BOYLE: If you- icing instructions are to make your
41 mixture 10 per cent salt, is the execution of that instruction left to Swift & Company also?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: The Wabash Railroad makes no attempt to determine whether it is really 10 per cent or any other per cent.

Mr. SAUSSER: No, sir.

Mr. BOYLE: Do you know whether there have been any complaints from shippers respecting refrigeration furnished at Delray?

Mr. SAUSSER: No, sir, I do not.

Mr. BOYLE: Have you ever had any such matters referred to you?

Mr. SAUSSER: Yes, sir, I have had, I expect, in my term there, one complaint that I can recall, that was that a man got too much ice.

Mr. BOYLE: Is that the only complaint you recall?

Mr. SAUSSER: That is the only one I have ever seen, yes sir.

Mr. BOYLE: To whom do you suppose complaints would be made. Mr. Sausser, if there were occasion to make any respecting the Delray station.

42 Mr. SAUSSER: I expect they would be made to our traffic department.

Mr. BOYLE: When did you first go to Delray?

Mr. SAUSSER: January 22nd, a year ago.

Mr. BOYLE: 1913?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: Who is Mr. Henry Miller of your company?

Mr. SAUSSER: Henry Miller is general manager, for the Receivers of the Wabash Railroad.

Mr. BOYLE: Where are his headquarters?

Mr. SAUSSER: St. Louis, Mo.

Mr. BOYLE: You are directly under him, are you not?

Mr. SAUSSER: No, sir, not directly. He is the general manager, and I report to the division superintendent.

Mr. BOYLE: Who is under the general manager?

Mr. SAUSSER: I expect we all are, in a way.

Commissioner McCHORD: You are under the superintendent, and is the superintendent directly under the general manager?

Mr. SAUSSER: He is under the general superintendent.

Commissioner McCHORD: Trace it back to the general manager.

Mr. SAUSSER: I am under the superintendent, and the Superintendent is under the general superintendent, and the general superintendent is under the general manager.

Mr. BOYLE: Do you receive any advice from Mr. Miller or through any of these channels, these various officials in the chain that you have named, directing you to supervise re-icing at Delray?

Mr. SAUSSER: I received advice some time ago to be present at the re-icing of cars at the Delray station, and ascertain the mode of operation, or how cars were iced at that point. That came to me from the superintendent, and to the superintendent from the general superintendent.

44 Mr. BOYLE: Were those instructions in writing, Mr. Sausser?

Mr. SAUSSER: First by phone and in writing, yes sir.

Mr. BOYLE: Have you a copy of it?

Mr. SAUSSER: Not with me, no sir.

Mr. BOYLE: Will you give us a copy of those instructions?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: And have it filed in connection with your testimony?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: Do you remember about what date that was?

Mr. SAUSSER: That I received the writing?

Mr. BOYLE: Yes.

Mr. SAUSSER: About December 10, 1913.

Mr. BOYLE: Did you receive any prior instructions along about the latter part of March or April?

Mr. SAUSSER: About the latter part of March Mr. E. A. Sollitt, who was Acting Superintendent at that time, called me on the phone and said: "We would like to have you watch some of the icing at the Delray Ice House, see under what conditions it is done, and see how it is handled," without any request to make any report whatever.

45 Mr. BOYLE: Did he ask you to just go there to see how it was done and inspect it once or twice a week, or to be there daily or every other day?

Mr. SAUSSER: Just to go there and inspect how it was done. The instructions in the letter received about the 10th of December just said: "We expect some time in the future to be called before the Interstate Commerce Commission to advise concerning icing at the Delray plant, and I wish you would make it your duty to be at this plant on an average of twice each week, and ascertain conditions and mode of icing at Delray."

Mr. BOYLE: Did you not receive instructions about April, 1913, that directed you to be present at Delray Icing station if not daily, at least every other day, in view of the investigation of the Interstate Commerce Commission in regard to icing stations, and in view of the complaints we had received, or rather, received by the Wabash Railroad Company, relative to the service at Delray?

Mr. SAUSSER: I never received a letter to that effect, no sir.

Mr. BOYLE: Maybe it did not get to you.

Mr. SAUSSER: That is possible.

46 Mr. BOYLE: Mr. Sausser, how much icing is necessary in placing these cars at the icing station, and taking them back and putting them in the train?

Mr. SAUSSER: That all depends on conditions, sir, how many cars, how many cars in the train. We have trains that we run right in to the icing plant and ice them pulling through. We have other trains we switch these cars out of and take them to the plant and ice them.

Mr. BOYLE: I assume that the train moving directly through is iced en route without any out of line haul, is that true?

Mr. SAUSSER: Yes sir; all trains are iced en route, all cars are iced en route eastbound, without any out of line haul.

Mr. BOYLE: Is a switching service necessary to break these trains in this direction, east and then west, both?

Mr. SAUSSER: Well, there is none, inasmuch as the icing of the cars is concerned. We have to pass Delray with the cars.

Mr. BOYLE: Going east?

Mr. SAUSSER: Yes, sir. Going west it means to take a car to Delray and place it, and have some westbound train pick it up there.

47 For that reason the ice house is located to the east of the eastbound main line, or to the south of the eastbound main line, which necessitates a crossover movement of the car.

Mr. BOYLE: Do you know whether there is any charge made by your company for the service of putting a car in there and stopping it at the icing station?

Mr. SAUSSER: No, sir.

Mr. BOYLE: And switching it where necessary?

Mr. SAUSSER: I do not. I don't think that there is any charge made. I think the situation of the ice house is a matter of our inconvenience. We cannot have them located on all sides to ice them east and westbound.

Mr. BOYLE: Mr. Sausser, who is in charge of Swift & Company's station at Delray?

Mr. SAUSSER: Mr. H. Booth.

Mr. BOYLE: What is his title, do you know?

Mr. SAUSSER: No, sir.

Mr. BOYLE: Mr. Sausser, pursuant to the instructions that you got, did you actually make any inspection of the icing station at Delray?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: To what extent?

48 Mr. SAUSSER: Went there and saw the mode of operation, saw how cars were iced.

Mr. BOYLE: Saw the physical operation?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: Saw how they put cars in and how they iced them?

Mr. SAUSSER: How they put cars in, and watched how they iced them, yes sir.

Mr. BOYLE: Did you attempt to tally or check the ice going in, and then check that against Swift & Company's bill.

Mr. SAUSSER: No, sir, I had no way of checking the ice going in.

Mr. BOYLE: Why not?

Mr. SAUSSER: The ice is not weighed.

Mr. BOYLE: It is measured?

Mr. SAUSSER: No, sir.

Mr. BOYLE: Taken in cakes?

Mr. SAUSSER: No sir; shoveled in.

Mr. BOYLE: Shoveled in?

Mr. SAUSSER: Yes, sir; shoveled until the bunker is full, if the car requires ice to full capacity.

49 Mr. BOYLE: How do you determine the number of tons, so many shovels to a ton?

Mr. SAUSSER: I did not. I suppose they do, but I did not. I could not tell.

Mr. BOYLE: Are there scales there to weigh this ice?

Mr. SAUSSER: I have not seen them, I have never seen them. There may possibly be scales there. If there are, they are not used.

Mr. BOYLE: Where is the ice just before they shovel it, on a platform?

Mr. SAUSSER: On a platform, even with the roof of the car.

Mr. BOYLE: Crushed and mixed with salt, is it?

Mr. SAUSSER: It is not fixed with salt.

Mr. BOYLE: When do they put the salt in?

Mr. SAUSSER: Some cars—I have a record of some cars they had put the salt in before they put the ice in, and I have records of some cars that the salt is added after the ice has been put in the bunkers.

Mr. BOYLE: Which is the proper procedure, do you know?

Mr. SAUSSER: No sir.

Mr. BOYLE: Mr. Sausser, do you know, or have you an opinion as to the cost of crushing ice and mixing it with salt, and furnishing ice under those circumstances, as compared with furnishing ice in larger lumps or cakes for shipments other than packing house products?

Mr. SAUSSER: The cost would be very slight. It is only a matter of a minute's labor with two hundred pounds of ice to crush it, as it is crushed at Delray.

Mr. BOYLE: But any difference in the cost would be against the crushed ice, and in favor of the larger cakes, I assume?

Mr. SAUSSER: Well, I cannot see it that way. If it is a small cake it crushes that much sooner than a big cake. As I said, I think it would take about a minute to crush a 200 pound cake of ice.

Mr. BOYLE: It does not take even a minute's time to crush it there?

Mr. SAUSSER: No, sir.

Mr. BOYLE: How do they put the cakes in when they use cakes of ice?

Mr. SAUSSER: Put the cakes in the bunkers when they use cakes of ice?

Mr. BOYLE: Yes.

Mr. SAUSSER: Put the cakes right in the bunkers.

Mr. BOYLE: Slide it over?

Mr. SAUSSER: Yes, sir, slide it over and drop it in, put it in the hole.

Mr. BOYLE: The other, they have a shovel?

Mr. SAUSSER: The other they break on the platform, crush it on the platform with a maul, and then shovel it into the bunkers.

Mr. BOYLE: It would take more time, therefore, to put in ice, shovel it in after it is crushed and mixed with salt, wouldn't it, than it would to place one cake?

Mr. SAUSSER: Just a little more time.

Mr. BOYLE: Mr. Sausser, did you notice by your making these inspections how Swift & Company's man or men determine the quantity of ice to put in?

Mr. SAUSSER: No, sir.

Mr. BOYLE: Did you notice them making any tally of it?

Mr. SAUSSER: Yes, sir. The car on its arrival at the ice house, the bunkers are open, the hatches taken out, and a man goes along and inspects how much ice there is to be put in, or inspects how much ice there is in the car, and I think he guesses on what it is going to hold from the size of the hole there. That is my opinion of it.

Mr. BOYLE: Does he have any tally to see how close he
52 guesses?

Mr. SAUSSER: No sir, he has no tally to see how close he
guesses.

Mr. BOYLE: He depends on that guess in making his report as to
the amount of ice furnished?

Mr. SAUSSER: I expect he does, yes sir.

Mr. BOYLE: And then would the Wabash Railroad Company, in
determining whether or not the ice had actually been put in the
bunkers, rely on Swift & Company's statement for it?

Mr. SAUSSER: Rely on Swift & Company's statement for it, yes
sir.

Mr. BOYLE: How many of these inspections did you make, Mr.
Sausser?

Mr. SAUSSER: I would average two a week, sometimes three a
week.

Mr. BOYLE: How long did you continue that?

Mr. SAUSSER: I continued it commencing along about the 15th
of December, up until I came to Chicago yesterday.

53 Mr. BOYLE: Prior to that time you made no such inspec-
tion?

Mr. SAUSSER: Prior to that time I did as instructed by telephone.
We have the different meat trains that we pull into Delray, and my
duties as an operating man were to hurry them along. In doing
this, oftentimes I would ride those trains from the time they hit my
terminal until such time as they left my terminal, in order to catch
the delay on the train and facilitate the movement. At this time it
would necessitate that I ride through the ice house and be there
while they were icing the cars, and I would see how they did the
icing.

Mr. BOYLE: How long would you stay at the icing station when
you visited it?

Mr. SAUSSER: Until the complete train was iced or the cars in the
train were iced that required it.

Mr. BOYLE: Do you know where *these all* shipments ordinarily
originated that were iced at Delray, Mich.?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: Where?

Mr. SAUSSER: Some of them originate at Kansas City, some at
St. Louis, some at Chicago, some in Iowa points.

Mr. BOYLE: And the shipments westbound?

54 Mr. SAUSSER: The shipments westbound originated at To-
ronto, Canada, mostly; that is the meat; and we had a few
vegetables that would come up from the Atlantic Seaboard via the
Niagara frontiner, that is, Buffalo and Niagara Falls, that would
require icing at Delray westbound.

Mr. BOYLE: They were all, therefore, interstate shipments?

Mr. SAUSSER: Yes, sir.

Mr. BOYLE: That is all, Mr. Sausser.

Mr. VEEDER: You said that the ice put in the cars was not

weighed, but shovelled in until the bunker was full. From what was the ice shovelled into the car?

Mr. SAUSSER: I did not say the ice was weighed at all.

Mr. VEEDER: No, I say you say it was not weighed, but was shovelled into the car.

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: Now I ask from what was the ice shovelled into the car?

Mr. SAUSSER: From the platform that the ice was crushed on.

Mr. VEEDER: On the platform, or was it in a carrier or conveyer.

Mr. SAUSSER: On the platform.

55 Mr. VEEDER: On the platform?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: Was that where it was crushed?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: How was it crushed, by machine or hand?

Mr. SAUSSER: By hand, with a maul.

Mr. VEEDER: What is the comparative volume of the eastbound and westbound movement requiring icing at Delray?

Mr. SAUSSER: There is no comparison in the east and westbound movement. The eastbound movement will run from 25 to 60 cars a day, and the westbound movement icing at Delray, would not average a car in three days.

Mr. VEEDER: So the icehouse was placed where it would be most convenient for icing the large volume of business?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: You say you inspected the icing at Delray two or three times a week during this period?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: Did you find that the rules and regulations of the railroad in respect to the icing of the cars had been fully carried out?

56 Mr. SAUSSER: Personally, I did not know under what conditions or what *you* rules were. All we have to go by is what the billing carries, and the notation on the billing, that the packer or the man that the shipment originates from instructs. That instruction is given to Swift & Company at Delray, and expect Swift & Company to have a man there with knowledge sufficient to ice the car in accordance with the instructions he receives.

Mr. VEEDER: And so far as your observation went, the cars were iced by Swift & Company at Delray in accordance with the instructions they received?

Mr. SAUSSER: I could not tell you that. I have no way to determine that.

Mr. VEEDER: You were there to observe.

Mr. SAUSSER: I was there to see the mode of operation. If Swift & Company claimed they put a ton of ice in a car and they only put 1200 pounds in, I do not know, because I am not a good guesser. If they claimed they put 10 per cent of salt in, and only put 6 or 16 per cent, I do not know.

Mr. VEEDER: I understand, but you went down there to observe the mode of the operation of the icing?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: Your purpose in doing that was to see whether the icing was being properly done?

57 Mr. SAUSSER: Yes.

Mr. VEEDER: For the benefit of the railroad?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: And its shippers?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: And you found that was the case?

Mr. SAUSSER: Yes, sir.

Mr. VEEDER: That is all.

Mr. BOYLE: Do you say that you know it was properly done?

Mr. SAUSSER: Why, in accordance with the circular that was on the wall there. In icing a particular car you prod your car, you have a long pole you force to the bottom and get the water out and then you put your ice in and then you salt it. In the times that I investigated that, that was done. In icing cars with bulk ice or so many tons, that is with no refrigeration, no salt added, that was done in accordance with instructions, except I cannot say as to how much ice and how much salt was put in, I do not know the percentage. The ice is handled with a shovel and the salt the same way.

58 Mr. BOYLE: Who prescribes these regulations as to prodding, and so forth?

Mr. SAUSSER: The regulation that I saw there was put out, I believe, by Swift & Company; I am not positive as to that.

Mr. BOYLE: Are you certain that it was not put out by the Wabash Railroad?

Mr. SAUSSER: I am not certain about that. I have never seen any instructions put out by the Wabash Railroad regarding the icing of cars.

Mr. BOYLE: That is all.

(Witness Excused.)

W. C. MAXWELL was called as a witness, and having been duly sworn, testified as follows:

Mr. BOYLE: What is your full name and position?

Mr. MAXWELL: W. C. Maxwell.

Mr. BOYLE: And your position with the Wabash Railroad?

Mr. MAXWELL: General Traffic Manager.

Mr. BOYLE: How long have you occupied that position?

Mr. MAXWELL: I think about four years.

Mr. BOYLE: Prior to that time?

59 Mr. MAXWELL: Assistant general traffic manager for about four years, and then 24 years with the Burlington Railroad in various capacities, always in the traffic department.

Mr. BOYLE: You are familiar, are you not, with the making and publishing of rates and charges for refrigeration performed at points on your line?

Mr. MAXWELL: Well, the only thing we have are the icing

charges; if you can call those refrigeration, yes, I am familiar with that.

Mr. BOYLE: Are you familiar with the actual service rendered at the various icing stations on your line?

Mr. MAXWELL: Only in a general way.

Mr. BOYLE: Are you familiar with the operation of the Moberly, Mo. station?

Mr. MAXWELL: No.

Mr. BOYLE: Decatur, Ill.?

Mr. MAXWELL: Only in a general way. I know from time to time I hear from our people that we perform ideal service there as a rule. I am in close touch with that.

Mr. BOYLE: Do you receive any complaints with respect to shipments which are refrigerated at Moberly or Decatur?

Mr. MAXWELL: We receive occasionally complaints, as we do on all business; but I do not think they are more than on any other class of business.

Mr. BOYLE: Are you familiar with the operation of the Delray icing station?

Mr. MAXWELL: Just in a general way, as I am with the others.

Mr. BOYLE: The Moberly and the Decatur stations are operated by the Walcott Railroad?

Mr. MAXWELL: Yes.

Mr. BOYLE: And the Delray station is operated by Swift & Company?

Mr. MAXWELL: Yes, sir.

Mr. BOYLE: Do you know who owns that station?

Mr. MAXWELL: No, I do not, that is to absolutely know. I think Swift & Company and the other packers are all interested in it now; that is, not all of them, but a number of others.

Mr. BOYLE: You do not feel competent to testify as to any division of ownership?

Mr. MAXWELL: No.

Mr. BOYLE: Has your company received many complaints respecting refrigeration at Delray?

Mr. MAXWELL: No, I should think they would be rare. I do not think we get any more there than we do at Decatur.

Commissioner McCORM: Who would get the complaints, if they were made?

Mr. MAXWELL: I think as a rule they shoot them at us.

Commissioner McCORM: Who do you mean by us, you?

Mr. MAXWELL: The traffic department, yes.

Commissioner McCORM: You would get them?

Mr. MAXWELL: Yes, I think we would get most of them.

Commissioner McCORM: Who else would get any of them?

Mr. MAXWELL: They might send some of them to the operating department, to the general superintendent, or the general manager, even; but I think most of them come to us.

Commissioner McCORM: Is there a divided responsibility there?

Mr. MAXWELL: I should not say so, no sir. The responsibility of that thing is all on the general manager, and under his department, the operation of it.

Mr. BOYLE: During 1912 were there very many complaints respecting the service at Delray?

Mr. MAXWELL: Wel-, we got some; I should not say very many. We got some and I suppose we got just as many at Decatur or probably more.

62 Mr. BOYLE: At Delray did you get any complaints from any of the packers respecting the icing service?

Mr. MAXWELL: I have never seen any, only from one packer. He kind of complains at times.

Mr. BOYLE: Who is that?

Mr. MAXWELL: Cudahy. They complain a little of that station.

Mr. BOYLE: Did he complain in writing?

Mr. MAXWELL: I think probably some of those complaints are in writing. I am not sure.

Mr. BOYLE: What was the nature of his complaint, do you know?

Mr. MAXWELL: No, I could not say at this moment. In a general way I think he felt he did not get quite as good treatment as some of the others. We have exactly the same complaints, though, with Decatur and then on the other hand we have got reports of private inspections made of our property which gives us the highest commendation for service and that sort of thing. They did not intend us to see those, the same people. We are only intended to get the kicks you know.

Mr. BOYLE: From whom did your complaints at Moberly come, principally?

63 Mr. MAXWELL: I do not recall of ever having seen any over there?

Mr. BOYLE: Or at Decatur?

Mr. MAXWELL: They are general: we get a little of those from all of them.

Mr. BOYLE: All packers?

Mr. MAXWELL: Yes, every once in a while.

Mr. BOYLE: From the packers?

Mr. MAXWELL: I should say all of them——

Mr. BOYLE: What packers?

Mr. MAXWELL: I should say all of them give us a little touch once in a while. They find some little fault with the operation, or about some particular car and that sort of thing.

Mr. BOYLE: But you only get complaints from one packer at Delray?

Mr. MAXWELL: That is all I recall having seen, yes.

Commissioner McCHORD: Do you know what Cudahy was complaining about?

Mr. MAXWELL: I rather felt from time to time that they thought they were not getting as good treatment as the——

64 Commissioner McCHORD: What sort of treatment?

Mr. MAXWELL: Well, maybe he did not get his full amount of ice or something of that sort, and that his cars were not iced as promptly; that is one of the things Mr. Sausser was intended to look after, and see that everybody was treated alike.

Mr. BOYLE: Did they ever complain that the bunkers had hay

in them, and things of that kind, and the ice was not properly crushed?

Mr. MAXWELL: I do not recollect of having personally seen such a complaint.

Mr. BOYLE: If such a complaint had been made, it would be on file in your office?

Mr. MAXWELL: Oh, yes. We would be very glad to give you all the complaints from all the stations, if you would like to have them, for a year, from all departments.

Mr. BOYLE: We may want that, but right now, have you any of your files with you?

Mr. MAXWELL: No, I have not, not bearing on that sort of thing.

Mr. BOYLE: When could you cause to be produced here you-File C-29417?

65 Mr. MAXWELL: We could get it for you tomorrow. It is in St. Louis, I suppose.

Mr. BOYLE: Would you mind writing for it?

Mr. MAXWELL: No, I would be glad to. I have not any idea what it is, but there is nothing in our record but what you can see it all.

66 Mr. BOYLE: For fear that that file may be too large and too cumbersome conveniently to get here, I will make request for the letters more specifically.

Mr. MAXWELL: I beg your pardon?

Mr. BOYLE: I will make this request more specific, the understanding being that if you desire to bring the entire file, you may do so. So far as we are concerned, we should like to have a letter from the Cudahy Packing Company to W. C. Maxwell, General Traffic Manager Wabash Railroad Company, St. Louis, Missouri, dated August 7, 1912, and a letter of August 9, 1912, W. C. Maxwell to Cudahy Packing Company.

Letter of August 10, 1912, W. C. Maxwell to F. E. Bolte, Superintendent of Transportation, Wabash.

Letter of October 16, 1912, F. E. Bolte, Superintendent of Transportation to W. C. Maxwell, General Traffic Manager.

Letter of September 2, 1912, to J. A. McNaughton, Traffic Manager, Cudahy Packing Company, to W. C. Maxwell.

Letter of September 4, 1912, W. C. Maxwell to S. E. Carter, General Superintendent Wabash.

Letter October 3, 1912, S. E. Otter, General Superintendent to W. C. Maxwell, referring to Mr. Maxwell's file C-29,417.

Letter of October 7, 1912, W. C. Maxwell to J. A. McNaughton.

Letter of December 26, 1912, J. W. Robb, Cudahy Packing Company to W. C. Maxwell.

Letter of December 26, 1912, J. A. McNaughton to W. C. Maxwell.

Letter of December 30, 1912, W. C. Maxwell to J. A. McNaughton.

Letter of January 2, 1913, J. A. McNaughton to W. C. Maxwell.

All of those letters relating to specific complaints and general complaints of Cudahy.

Mr. MAXWELL: May I have them presented by Mr. Newman, our Assistant General Freight Agent?

Mr. BOYLE: Yes, sir.

Mr. MAXWELL: Or do I have to stick here?

Mr. BOYLE: If he is familiar with it, I suppose the letters will speak for themselves if you will obtain them.

Mr. MAXWELL: Yes, we will give you anything we have got; in fact, I will give you notice now you can get a truck load of that kind of stuff on pretty nearly everything, coal or anything else
68 if you want to go into my office. That is part of the daily life.

Mr. BOYLE: Mr. Maxwell, there are two more letters that relate to a matter about which Mr. Sausser was questioned. Letter of March 28, 1913, W. C. Maxwell to Henry Miller advising him that the Commission was investigating icing stations, and it might be well, in view of that, to make some arrangement to have some inspection of the service daily or at least every other day at Delray. Mr. Miller replied to Mr. Maxwell under date of May 3, 1913, referring to Mr. Maxwell's file A-29,417, informing him that Trainmaster Sausser of Detroit, had been thoroughly advised as to the proposed action of the Commission, and instructed to personally supervise the re-icing at Delray, so that he would be in a position to give evidence.

Mr. MAXWELL: I would be glad to get that. My position right along on this is that we have some examination of that house, and you will find letters prior to that date from me, before you ever got into this at all, before the Commission ever began to take it up, both the packer, the owner of the house, and the Traffic Department of the

Wabash, that we always have tried there to see that everybody
69 is treated alike, and there are no real grounds for complaint.

Mr. VEEDER: Let me interrupt you right on that point, Mr. Maxwell. Has not Swift & Company itself urged the railroad to furnish supervision?

Mr. MAXWELL: Yes, I think there should always be some one to watch that operation. We are so scant on affairs of that sort, we have to trim down all the time that we cannot perhaps supervise it as we would like, and that request was long prior to the time of this investigation. I can show you any number of letters about it. There is nothing secret or underhand about this whole thing.

Mr. BOYLE: Mr. Maxwell, any other letters that you care to present from that same file, the Commission will be very glad to have.

Mr. MAXWELL: I will look over the file or any other file. I will be back to-morrow and see if I cannot dig you up something to show the Commission that our position has been to have somebody there always.

Mr. BOYLE: We will be glad to receive data from any of your records at all.

Mr. MAXWELL: Yes.

Mr. BOYLE: Do you recall whether you have ever had any
70 complaints from Morris & Company respecting icing of shipments at Delray?

Mr. MAXWELL: I do not at this moment remember ever having had one. It is barely possible that we may have had such a complaint.

Mr. BOYLE: From Armour & Company?

Mr. MAXWELL: I don't remember ever having one from them. This file bears on the subject of icing, doesn't it have the Decatur complaint in there?

Mr. BOYLE: I don't know whether it was Decatur.

Mr. MAXWELL: They are just as numerous. They keep coming in.

Mr. BOYLE: I venture to say it is, Mr. Maxwell. That seems to be—

Mr. MAXWELL: We try to keep them down.

Mr. BOYLE: That seems to be your icing file. Mr. Maxwell, when complaints were made respecting the service performed by your company at Decatur, what action was taken?

Mr. MAXWELL: We have had somebody go right after them. We have got a superintendent right on the ground, and we have either taken it up with our Purchasing Agent—we have not taken it up direct with him, but we take it up with the General Manager
71 or General Superintendent, and they go right after it. We have got a concise return, I think, from pretty nearly all those complaints, because we go right into them fully.

Mr. BOYLE: And know just exactly what happens?

Mr. MAXWELL: As a rule we have, that is my impression.

Mr. BOYLE: And can take such steps as are necessary to correct things?

Mr. MAXWELL: We do. We have corrected them, as a rule, the particular things complained of.

Mr. BOYLE: When you receive complaints about shipments at Delray, what do you do?

Mr. MAXWELL: Take it up in the same order, take them up with the people at Detroit, and also take them up with Swift & Company. I do not say we take up every one, but from time to time we notify them—

Mr. BOYLE: What can the people at Detroit do, Mr. Maxwell? You mean your own people at Detroit?

Mr. MAXWELL: Well, for illustration, some fellow says: "Now, they do not treat my car the same as they treat anybody else." Mr. Sausser, while he did not make it clear, knows that they do not distinguish at all between cars. The top of the car is all they
72 see, practically, and they do not know whether it is a Swift car or a Cudahy car or an Armour car, the ice is going in on top of the car. That is my belief of the general practice of doing business over there. There is not a particle of discrimination, regardless of all the kicks that have ever come in about it. That is my firm belief about that.

Mr. BOYLE: How do you know, Mr. Maxwell, that no discrimination exists in the quality of the service of icing? Is that your opinion, or can you so testify?

Mr. MAXWELL: Well, I have had it up so many times and I have had things up so many times with Mr. McNaughton—that is practically the only complaint we ever had there, and I think that is at the bottom of this complaint. It is not the real question whether he gets the same icing service as the other fellow.

Mr. BOYLE: What we want to know, Mr. Maxwell, is, how you would go about remedying a situation about which complaint justly might be made respecting the furnishing of ice at Delray?

Mr. MAXWELL: Take it up with Mr. Helm, probably, superintendent at Detroit, and he would get—

73 Mr. BOYLE: Mr. Helm?

Mr. MAXWELL: Yes, the superintendent at Detroit. I don't know whether Mr. Sollitt, Assistant Superintendent there would handle it, or whether it would come to Sausser. Maybe we did not have much faith in some of those complaints, anyway you know.

Mr. BOYLE: In its final analysis, then, it resolves itself into this, that you have to rely on Swift & Company absolutely for all information respecting the actual furnishing of ice?

Mr. MAXWELL: Yes, I should think we do as to the amount, whether they are putting in what they say they do, what they charge for. I suppose the investigation went to the extent of checking that, if it did not do it.

Mr. BOYLE: Do you recognize this letter, Mr. Maxwell?

Mr. MAXWELL: No, I have not seen it.

Mr. BOYLE: I am going to read it to you.

Commissioner McCHORD: You say that you have not much faith in the complaints, who do you mean by that.

Mr. MAXWELL: I don't feel that they are all just well founded, the complaints about the icing itself. There is some internal work between the various packers. They keep harping at each
74 other about something and that might be at the bottom of it.

Commissioner McCHORD: I don't know just what you mean. A man makes a complaint to you about icing or shipping or rates, or rules of practice—

Mr. MAXWELL: We follow it up religiously as if it was a legitimate complaint, and try to have whatever correction there should be made on it.

Commissioner McCHORD: You seemed to conclude that there was not much in these complaints, you say you have not much faith in them. I don't know just what you mean by that.

Mr. MAXWELL: I don't think the Cudahy people have liked the fact that somebody else owned the house at Detroit.

Commissioner McCHORD: What were they complaining about? They said they did not get enough ice, wasn't that it?

Mr. MAXWELL: Possibly some of their complaints may be of that nature.

Commissioner McCHORD: That is a question of fact to be determined as to whether he did get his ice?

Mr. MAXWELL: Yes, I should think so.

Commissioner McCHORD: Did you lack faith in him, or lack faith in his complaint?

75 Mr. MAXWELL: I did not have faith in all of them.

Commissioner McCHORD: Did you have enough faith in them to find out whether the man was getting what was coming to him?

Mr. MAXWELL: I took several of them.

Commissioner McCHORD: What did you do about it, what did you find?

Mr. MAXWELL: Every one of them has gone the same way.

Commissioner McCHORD: So you cannot tell what the facts were?

Mr. MAXWELL: Not without looking it up, no sir. We would be very glad to look up any of those appeals and see just what action we did take.

Commissioner McCHORD: You did not have enough faith in the proposition to ascertain the facts?

Mr. MAXWELL: If you had investigated it, probably 25 times and found that it was all right, you became convinced in your own mind that the service was just, fair and equitable, that you were dealing properly with the public, and a man continued to harp at you about a thing like that and you absolutely felt that everything was all right, that the service was properly performed—

76 Commissioner McCHORD: But you have no supervision over it yourself?

Mr. MAXWELL: No, I could not supervise the ice house there at Delray.

Commissioner McCHORD: That is what he is complaining about, that he did not get enough ice.

Mr. MAXWELL: I would take the word of such men as Sausser and Sollitt and Helm, men that were there on the ground, and that are all good clean, honorable men.

Commissioner McCHORD: Cudahy is, too, isn't he?

Mr. MAXWELL: Yes.

Commissioner McCHORD: Go ahead, Mr. Boyle.

Mr. BOYLE: Mr. Maxwell, we all agree that you are perfectly justified in taking the word of such men as Mr. Sausser, but did you ever get such word from Mr. Bolte—I don't know whether he got it from some minor official, respecting the complaint—did you ever get such an advice as this, where he complained of notice received of icing at Delray which had been referred to him by you?

“I return herewith letter from the Cudahy Packing Company sent me with your letter of August 10th, File C-294. In handling this matter with Superintendent Helm”—that is your superintendent?

77 Mr. MAXWELL: Yes, sir.

Mr. BOYLE (continuing): “He advises me that in the opinion of Swift & Company's representative at Delray where all our re-icing is done, the Cudahy people had no basis for complaint. However, the matter will be -atched as closely as possible, in order to eliminate these kicks from the packers.”

Mr. MAXWELL: That is possible, that there was such a letter passed between some of the clerks handling the business. I could not handle everything that is sent out, in the nature of things.

Mr. BOYLE: When you say that you know of no better authority than Mr. Sausser and have no occasion to doubt him at all, in all of which we agree, isn't it a fact that Mr. Sausser can only report to you what Swift & Company said to him?

Mr. MAXWELL: No, if I was down there, a big doubled-fisted fellow like is he, able to work, and some fellow said, "I am not getting enough ice," and I was told to see that he was, you bet a fellow like that would do it. That has been the main ground of the complaint, that they do not treat all those cars alike. As far as that is concerned, you will find a great many cases of this kind in our file I think from time to time.

78 Mr. BOYLE: Well, you can supply us with enough of that for this investigation, we would be very glad to have it, Mr. Maxwell:

Along that same line is a letter from Mr. Cotter—he is your General Superintendent—he refers to the papers that were referred to with your letter of September 4th, file C-29,417, and then says:

"Mr. Booth, Manager of Swift & Company's ice house at Delray, claims that Cudahy and other packers' shipments are given exactly the same attention that are given the Swift shipments, and I am satisfied that he is correct in his statement. Mr. Booth has been in charge of this ice house for a great many years, and seems to be an exceptionally competent man."

Mr. MAXWELL: That same thing comes up periodically. Suppose you had a lot of men you sent down there to look into it and you kept getting those things and you always answered that you had gone into it and felt satisfied it was all right, you cannot do more than just give a formal answer in those things. We have done that, and it does not differ from many other things.

79 Mr. BOYLE: Then your answer to Mr. McNaughton, of the Cudahy Packing Company, in response to his complaint, and after this investigation had been made, reads as follows:

"Your letter of September 2nd, about icing at Delray. Our general superintendent personally made an investigation of the conditions of icing house and advises me that your shipments are given exactly the same attention at Delray ice house as other cars. He advises further that Manager Booth, who has been in charge of the ice house for a great many years, seems to be an exceptionally competent man."

That letter is undoubtedly based on Mr. Cotter's letter to you of October 3rd.

Mr. MAXWELL: Yes.

Mr. VEEDER: May I ask a question. In that letter to Mr. Maxwell, did not the writer, whose name I did not get, say that he himself personally was satisfied?

Mr. MAXWELL: Mr. Helm. I so understood it. He meant that he had been down there and talked it over and had seen it twenty

times and fifty times, and almost every day; it is right in the yard there, and they know what is going on.

Mr. BOYLE: Yes, that statement was made by Mr. Cotter, where he said that "Mr. Booth, the manager of Swift & Company's
80 ice house at Delray, claims that Cudahy and other packers' shipments are given exactly the same attention at Delray ice house that are given the Swift shipments, and I am satisfied that he is correct in his statement."

The competency of the men upon whom you depend to make these investigations, or to keep your icing service up to the standard, is readily determined and fixed by you at such places as Decatur and Moberly; that is true; you can select your own men and they are responsible directly to you?

Mr. MAXWELL: Yes, I think they have competent men.

Mr. BOYLE: Can you discharge them?

Mr. MAXWELL: Yes.

Mr. BOYLE: And replace them in any way, or transfer them.

Mr. MAXWELL: Yes.

Mr. BOYLE: That same condition does not obtain at Delray?

Mr. MAXWELL: No.

Mr. BOYLE: Therefore you are dependent for the performance of a service that you hold yourself out to the public to perform, for a fixed rate, upon an agency over whose competency you have no control; is that true?

Mr. MAXWELL: Well, I should think there would not be any difference at all. I think the railroad is probably a little weak
81 in not having more close supervision there, which the packers from time to time have begged us to have, and I have begged our operating department to more closely supervise that, and that when a man ordered 1,600 pounds of ice, we ought to have a man there to see that he gets it. We have been weak in that respect, we admit that. But outside of that, I think their service has been as good or better than our own; outside of the actual checking. The public is served at a low price.

Mr. BOYLE: How do you know it is a low price, Mr. Maxwell?

Mr. MAXWELL: Well, I think ice is low, \$2.50 is a pretty low price, with the salt thrown in.

Mr. BOYLE: What does it cost?

Mr. MAXWELL: At Detroit?

Mr. BOYLE: What does it cost to put it in the bunkers at Delray?

Mr. MAXWELL: I do not know.

Mr. BOYLE: How do you know it is a low price?

Mr. MAXWELL: You have all the records covering the operation of our house at the other points right before you.

Mr. BOYLE: We have not anything on Delray.

Mr. MAXWELL: No, you have it at the other points. Is
82 not that a fair guide?

Mr. BOYLE: I do not know, it may be and it may not be.

Mr. MAXWELL: I should think it would be.

Mr. BOYLE: Can you tell us where the supply of ice used at Delray comes from?

Mr. MAXWELL: No.

Mr. BOYLE: Can you tell what it costs?

Mr. MAXWELL: No.

Mr. BOYLE: Can you tell how many men are employed there and what salary they get?

Mr. MAXWELL: No. I have sold a good many thousand cars of ice myself in times past and know quite a bit about the ice business. I know what we are buying ice for at these various points. You have all that record for three years and can see how profitable the business is. You called for those records.

Mr. BOYLE: Mr. Maxwell, the report which your company made to the Commission shows that more than 10,000 tons of ice were stored at Decatur during 1912.

Mr. MAXWELL: No.

Mr. BOYLE: That is taken direct from your reports.

Mr. MAXWELL: That is, that we used about that much.
83 We did not store that much.

Mr. BOYLE: No, you stored 10,781 tons.

Mr. MAXWELL: We stored that much?

Mr. BOYLE: Stored. I will verify that right now; I may be wrong. (Referring to papers.) You stored 10,781.2 tons.

Mr. MAXWELL: That is more than I thought we had capacity for down there.

Mr. BOYLE: Have you examined that report, Mr. Maxwell? Have you ever seen the report which was made to the Commission?

Mr. MAXWELL: I saw the summary of it. We only have storage there for about two-thirds of our requirements. We wanted to add to that house and begged the court to let us have a few thousand dollars, but we cannot get a penny for it, and we have not got it ourselves, so we will just fool along the best we can here.

Mr. BOYLE: Your report shows a very slight profit from the operation of the station; in 1912, about \$34 or \$35. During 1912 what was the charge to the shipper for ice furnished?

Mr. MAXWELL: \$2.50.

Mr. BOYLE: Taking packing house products.

84 Mr. MAXWELL: All the service to everybody on everything.

Mr. BOYLE: \$2.50 on packing house products including salt?

Mr. MAXWELL: Yes, I think it did. We tried to switch that a little and get a little more money for the salt, but I think we had to finally change that.

Mr. BOYLE: Your price of ice varies a little bit from year to year, and naturally will, on account of various conditions, will it not?

Mr. MAXWELL: Well, I think it varies a good deal, that is the cost price. I do not know where you will get any natural ice this year, from the looks of things.

Mr. BOYLE: What determines that price, Mr. Maxwell, the price that you charge the shippers for ice.

Mr. MAXWELL: That \$2.50 you know, has been fixed here for I do not know how long, all over the Central Freight Association, for a great many years.

Mr. BOYLE: Who fixed it?

Mr. MAXWELL: I should think these Freight Traffic Associations, the Central Freight Association.

Mr. BOYLE: What do you suppose they took into consideration in fixing it? Do you suppose they took into consideration
85 the cost of furnishing the ice or competitive conditions?

Mr. MAXWELL: I suppose at the time that was fixed that was probably a fair thing. Since then labor and everything has gone up, not only for harvesting the ice, but for putting it in the cars, and every feature of the thing, putting it away in the houses; and it may be a little bit too low now.

Mr. BOYLE: Did you ever try to raise it?

Mr. MAXWELL: Try to?

Mr. BOYLE: Yes.

Mr. MAXWELL: I never did. I do not believe that you could get these—

Mr. BOYLE: Did the Wabash Railroad ever try to raise it?

Mr. MAXWELL: No. I tried to get a little more for that salt down at Decatur last year or the year before, and modify it a little, but did not succeed.

Mr. BOYLE: Why didn't you?

Mr. MAXWELL: Why?

Mr. BOYLE: Yes.

Mr. MAXWELL: Because of competitive conditions; here at Chicago the price remains unchanged, and we treat that as practically a Chicago point.

86 Mr. BOYLE: What controls the price at Chicago?

Mr. MAXWELL: Well, you have the Central Freight Association charge in here, for one thing.

Mr. BOYLE: Did the Chicago & Alton try to advance their charges at Roodhouse?

Mr. MAXWELL: I heard indirectly that they did. Mr. King is here, he can no doubt answer that when you come to him.

Mr. BOYLE: Did you ever have any correspondence with Mr. Ross?

Mr. MAXWELL: I exchanged two or three letters. He was begging us to put ours up to what he had put theirs.

Mr. BOYLE: The Chicago & Alton had already put theirs up?

Mr. MAXWELL: They put it up, yes, and then they backed down, I believe.

Mr. BOYLE: What was the number of that tariff which you did issue, making the advance?

Mr. MAXWELL: Oh, Lord, I could not tell. Among all the millions of tariffs, you do not expect me to remember a tariff number, do you?

Commissioner McCHORD: I believe you said you thought \$2.50 a ton was low for ice.

Mr. MAXWELL: Well, that house at Decatur shows \$16
87 profit, I believe, on a year's business.

Commissioner McCHORD: I know, but I thought you expressed an opinion that \$2.50 a ton was low for ice.

Mr. MAXWELL: I think the cost of everything has gone up. We cannot purchase as much labor as we could formerly, when that price was originally made, and I think it is too low.

Commissioner McCHORD: How was it when the price was made?

Mr. MAXWELL: I think the railroads probably pulled out at a small profit.

Commissioner McCHORD: I want to know what you know about what ice is worth. What is it worth to get out a ton of ice?

Mr. MAXWELL: Take the Decatur house, last year we had to supply it from around Chicago and up in Wisconsin, even. We have had to buy ice in the summer and ship it down there. The house does not hold—

Commissioner McCHORD: No, I did not ask you that. But what was it worth?

Mr. MAXWELL: Well, I have sold thousands of cars—

Commissioner McCHORD: Tell us, then.

Mr. MAXWELL: 25 to 40 cents; it all depends on where you get it and what your facilities are for gathering it; if you have modern machinery, and endless chains and double track
88 on both sides of your benches and you can keep a continuous performance, you can make money on 35 cents to harvest it.

Commissioner McCHORD: What could you do with 25 cents?

Mr. MAXWELL: Some of them can make money with that. It all depends whether you are harvesting eight inch or ten or twelve or fourteen inch ice.

Commissioner McCHORD: What else do you load it with, on the price of \$2.50?

Mr. MAXWELL: This \$2.50 price?

Commissioner McCHORD: Yes. You start off by saying that it is worth from 25 to 40 cents to gather it. I want to find out what the ice is worth.

Mr. MAXWELL: I do not know where you would go to gather any right now. It would be a good ways north of here.

Commissioner McCHORD: You have expressed an opinion that \$2.50 is low for a ton of ice. I want to see on what you base that opinion.

Mr. MAXWELL: I base that very largely on what it finally costs you to get your ice into these houses. And you have your shrinkage and care of it, and then bringing it up in small lots and all
89 that sort of thing; so when you take an initial price of 35 or 40 cents, and consider that you may have to haul that frequently 200 miles, and unload it and put it away, soon brings it up to a pretty good price. You get up to your \$2.50 or pretty close to it. We have been compelled to buy for the last two or three seasons machine ice almost altogether.

Mr. BOYLE: Do you remember what the Chicago & Alton rate was at Roodhouse?

Mr. MAXWELL: It was originally just the same as East St. Louis and Chicago, \$2.50 with the salt thrown in; and then they tried to get something for the salt, did not throw it in but charged for that.

Mr. BOYLE: They actually published a tariff?

Mr. MAXWELL: Yes.

Mr. BOYLE: Making a charge of 40 cents a hundred for the salt.

Mr. MAXWELL: Yes. I never did that.

Mr. BOYLE: And a minimum of \$1.25 for ice and 40 cents a hundred for salt.

Mr. MAXWELL: Small lots, yes.

Mr. BOYLE: Did not Mr. Ross take up with you the question of getting you to make a similar publication from Decatur?

90 Mr. MAXWELL: Yes.

Mr. BOYLE: Did you not make a change in your tariffs—

Mr. MAXWELL: I waited about six months, and then went about half way. If you saw our tariff afterwards, I just charged for the gross weight of the ice and salt. Then I was out of line with East St. Louis and Chicago and every other place. These junctions were all making a \$2.50 charge, and we are competing against them, by crossing the country.

Mr. BOYLE: With what points?

Mr. MAXWELL: East St. Louis and Chicago.

Mr. BOYLE: Who operates the icing stations at those places?

Mr. MAXWELL: The railroads operate some of them.

Mr. BOYLE: At East St. Louis?

Mr. MAXWELL: Yes, I think so.

Mr. BOYLE: How about the big station on the Terminal Railway Association there?

Mr. MAXWELL: Armour & Company operate a big station in there, I guess they do more icing than anybody else, probably more than all the others combined.

Mr. BOYLE: I did not mean to interrupt you. You were out of line with these points and—

91 Mr. MAXWELL: And had to drop back again.

Mr. BOYLE: Did you receive very many requests from the packers to drop back?

Mr. MAXWELL: Yes.

Mr. BOYLE: Mr. Maxwell, I would like you to cause to be produced here at the same time tomorrow that you produce these complaints, and I will have a list of these made for you—

Commissioner McCHORD: Just tell him now what you want.

Mr. BOYLE: Yes, and then I will give you a list of them later, as I want this in the record. We would like to have the correspondence between your office and Armour & Company or the Armour Car Lines, if it is so addressed.

Specifically, a letter of August 1st, 1912, C. O. Frisbie, Traffic Manager to W. C. Maxwell; a letter of August 12th, 1912, from W. C. Maxwell to C. O. Frisbie; a letter dated April 17th, 1913, from C. O. Frisbie to W. C. Maxwell; a letter dated May 1st, 1913, from W. C. Maxwell to C. O. Frisbie. Now that relates to Mr. Frisbie's protests against your rate.

Mr. MAXWELL: I should think you would ask for all of them.

Mr. BOYLE: I am going to.

92 Mr. MAXWELL: That just makes it appear that the Armour Car Lines were trying to do something that is irregular—

Mr. BOYLE: You are a little bit hasty, Mr. Maxwell.

Commissioner McCHORD: This is not the time to make a speech about this thing. Go along with your interrogations.

Mr. BOYLE: I am not going to slight anybody, you can rest assured of that. That is the protest against the rate, and your answer stating that the rate is merely cost and is less than the charge being made by the road which is handling most of the traffic out of Kansas City. In other words, you try to defend it; and the next letter from Mr. Frisbie calls your attention to the fact that the Chicago & Alton have reduced their charges; and then your letter of May 1st just encloses a copy of your new tariff to Mr. Frisbie, in which you go back to the old basis of \$2.50 and furnish salt free.

Also the correspondence between your railroad and Morris & Company, being particularly, a letter from C. B. Heinemann, Assistance Traffic Manager, Morris & Company, dated March 27th, 1913, to W. C. Maxwell; letter from W. C. Maxwell to C. B. Heinemann, dated March 28th, 1913; that is a similar letter, a protest from Morris & Company and a defense by you; a letter from

93 C. B. Heinemann to W. C. Maxwell, dated April 19th, 1913, further protesting and concluding "If you are to continue meeting the competition of the traffic Kansas City to Chicago, your tariff will have to be properly lined up to take care of this feature." Letter from C. B. Heinemann to W. C. Maxwell, dated April 24, 1913, Mr. Heinemann's file 387, Mr. Maxwell's file C-29, 417, making a further protest, and stating "If you are to continue handling this highly competitive traffic, it will be to your interest to line up your icing tariffs to correspond with those of the C. & A." and so forth. Letter from W. C. Maxwell to C. B. Heinemann, dated April 26th, 1913, defending the rate as being reasonable. A letter from W. C. Maxwell to A. W. McLaren, Traffic Manager of Morris & Company, dated May 1st, 1913, file A-29417, enclosing a copy of a new icing tariff, at Decatur, as being the tariff going back to the old basis, and stating, "We need some business at Chicago and Chicago Junctions; you told me about two weeks ago you would help me out on this, but haven't done very much yet."

Also copy of the correspondence between the Walnut Railroad and the Cudahy Packing Company; being particularly a

94 letter from J. A. McNaughton, dated August 8th, 1912, referring to your tariff M-5813. That is a similar protest.

And the reply of Mr. Maxwell to Mr. McNaughton of August 12th, 1912, defending the tariff. A letter from Mr. McNaughton to Mr. Maxwell, dated September 3rd, 1912, makes a further protest. Mr. Maxwell to Mr. McNaughton dated September 5th, 1912, further relating to this matter. Letter from Mr. McNaughton to Mr. Maxwell, dated April 18th, 1913, calling your attention to the fact that the Alton has reduced its rate. Letter dated April 25th, 1913, from Mr. Maxwell to Mr. McNaughton, further defending the rate, although the Alton has made the reduction. Letter of May 1st, 1913, from W. C. Maxwell to Mr. McNaughton, enclosing copy of

new tariff and stating "We need more business at Chicago and Chicago Junctions."

Also any similar correspondence between the Walcott Railroad and Sulzberger & Sons Company. I have not reference to those letters, but I would like to have them if they are in that file.

Mr. MARVELL: You are going to give me that list? You said not to take it down.

Mr. BORER: Yes.

15 Mr. MARVELL: We will be very glad to furnish that promptly.

Mr. BORER: There also appears to have been some correspondence between your office and the St. Louis Independent Packing Company of St. Louis, and if you care to, that correspondence may be supplied. We will not require it, but you may furnish it if you care to. It is all evidently in the same file.

Mr. MARVELL: We would be glad to.

Mr. BORER: I think in connection with that, it would be well to have the correspondence between your office and Mr. W. B. Rose, Vice-President of the Chicago & Alton; that being your letter to Mr. Rose of April 5th, 1912; Mr. Rose's reply to you, dated April 6th, 1912; Mr. Rose to Mr. Marvell, dated July 27th, 1912; Mr. Marvell to Mr. Rose, dated July 27th, 1912; Mr. Rose to Mr. Marvell, August 6th, 1912. The copies here to your file A-204. I do not know whether those letters are in A-204 or in the other file, 20-207, also your letter to Mr. Rose dated August 12th, 1912.

It might be well to state that the purpose for which this correspondence is desired is to show that the packing companies exercise a considerable influence on the icing rates, and by virtue of 20 the arrangement that they control frequently successfully avoid the influence.

It will be our purpose also to attempt to show again in this connection that the strategic location of icing stations operated by packing houses or in the interest of packing houses or by interests allied with packing houses exercise a very determining influence on the icing rates generally throughout the United States.

Mr. MARVELL, at Decatur and Moline, where your company operates its own icing stations, you are shipments other than packing house products and fresh meats and so forth?

Mr. MARVELL: Yes.

Mr. BORER: You make a charge of \$2.50 a ton for ice?

Mr. MARVELL: A uniform charge for any and all kinds of freight that is iced.

Mr. BORER: Is there any charge for the labor of putting the ice in?

Mr. MARVELL: That includes everything.

Mr. BORER: \$2.50 a ton?

Mr. MARVELL: Yes.

Mr. BORER: And in the case of packing house products at the same station, at the same time, you make a charge of \$2.50 and five and the mill fee?

97 Mr. MAXWELL: And so we do with a car of fruit or anything of that sort that requires salt.

Mr. BOYLE: Does fruit require salt?

Mr. MAXWELL: I do not know. The price is open to the public.

Mr. BOYLE: Is it a fact that any fruit moves under salt refrigeration?

Mr. MAXWELL: I do not know.

Mr. BOYLE: That is all with Mr. Maxwell at this time.

Commissioner McCHORD: Do you want to ask Mr. Maxwell anything?

Mr. WALTER: Will he be on the stand again?

Mr. BOYLE: Not that I know of.

98 Mr. WALTER: Mr. Maxwell, you have been in the business for a great many years, and have observed the operation of private car lines, particularly refrigerators. I will just ask you one or two questions on that. State whether or not you regard it as practicable and feasible for your line to own and operate refrigerator cars sufficient to take care of the business which your line originates and handles?

Mr. MAXWELL: No, I do not, unless there was a very large car pool of some sort.

Mr. WALTER: So far as each individual line owning it, you think it is not practicable?

Mr. MAXWELL: I do not.

Mr. WALTER: State why not, just briefly.

Mr. MAXWELL: Take the business of the packers, you probably have 25,000 cars a year spasmodic business where there may be but one point, and then it switches to some place else, and then it drops down on account of a slump or something of that sort, the trend of trade shifts, all that sort of thing shifts.

Mr. WALTER: You mean as between packing centers.

Mr. MAXWELL: Yes, sir.

99 Mr. WALTER: You might move supplies from Chicago, or it may be supplied from Oklahoma City or Kansas City or St. Louis.

Mr. MAXWELL: It varies.

Mr. WALTER: As long as the railroads use these cars, your judgment is they should pay a fair compensation for them?

Mr. MAXWELL: I believe anybody, including the railroads has got to have some fair return on the capital invested in business.

Mr. WALTER: The same rule which should be applied to the railroad earnings, should also be applied to cars?

Mr. MAXWELL: I think they are entitled to a return on the investment.

Mr. WALTER: No matter in what way that may be measured, it must be just to the investment.

Mr. MAXWELL: If we are to stay in business.

Mr. WALTER: Mr. Maxwell, yesterday some questions were asked as to compensation on a mileage basis as compared with per diem. What are your views on that?

Mr. MAXWELL: I have not formed any definite opinion. It is

a matter more of the operating department than in handling. It is a pretty big question, and I would not want to answer it without consulting some of the higher operating officials.

100 Mr. WALTER: It is not to be disposed of by yes or no as the judgment or opinion of anybody.

Mr. MAXWELL: No, sir.

Mr. WALTER: It must be arranged in such a way as to secure a reasonable return upon the investment.

Mr. MAXWELL: That is the way I would look at it; yes, sir.

Mr. WALTER: As to the return of empties, state what you know about the expedited movement and the necessity for it, if there is such a movement.

Mr. MAXWELL: We run them as a rule in train lots from Detroit, getting 80 or 100 together and make it as big a train as possible to make it a pretty good movement.

Mr. WALTER: That is economical railroading?

Mr. MAXWELL: I think from the frontier over to Detroit we run them along and put them there in various trains. I think it is an economical use to gather all you can haul and come along with them.

Mr. WALTER: Get a revenue paying load in it as soon as possible?

101 Mr. MAXWELL: Yes. When you have got a lot of products to move, the packers crowd us more than they do at other times. I believe there are some idle cars now, some of them are not carrying very much, but if the movement was heavy, they would be crowding us to hurry them back.

Mr. WALTER: That is in the best interest of the railroad as well as the owner of the car?

Mr. MAXWELL: I think it would help us all if we could move all of our freight a little quicker than we do, not only refrigerator cars, but other freight.

Mr. WALTER: Can you give us some idea of the character of westbound movement on your line requiring refrigerator equipment? You might compare that with the eastbound.

Mr. MAXWELL: It is nothing like 5 per cent westbound as compared with eastbound. It would be a good deal less than 5 per cent.

Mr. WALTER: What is the relative relation of loads and empties of other kinds of equipment, box and so forth, eastbound as compared with westbound on your line?

Mr. MAXWELL: I should think our movement of other classes of equipment is about the same whether it is east or west.

Mr. WALTER: You think the empty movement would about balance?

102 Mr. MAXWELL: As between east and west, yes.

Mr. WALTER: Does that vary in different seasons of the year and on different divisions of your line?

Mr. MAXWELL: It varies at different seasons on different divisions. For instance, we were hauling empties a short time ago for coal from the division, anthracite coal. That is rather unusual, to haul them east, and so forth. It is generally shipped in—it is more of a special movement.

Mr. WALTER: That is a traffic condition that determines the movement of the empties?

Mr. MAXWELL: Yes, sir.

Mr. WALTER: Now, as to the products which move in refrigerator cars other than beef and its products, that might move in refrigerator cars, does that vary with different seasons of the year?

Mr. MAXWELL: That is, products moving in refrigerator cars other than beef?

Mr. WALTER: Yes, that is other than the products of beef?

Mr. MAXWELL: Outside of the berry business that is mostly a spasmodic movement, like apples and peaches and tomatoes, they come along from time to time, and beer. Beer is more of a regular movement.

103 Mr. WALTER: Some questions have been asked as to the loading in refrigerator cars of merchandise and traffic of that sort. What is your railroad's practice as to whether that loading would be made and should be made in refrigerator or in box cars?

Mr. MAXWELL: I think it is an economic waste not to load them all if you can. If you could load those refrigerators, they should be loaded back.

Mr. WALTER: But when you have got available equipment, box and refrigerator, which is preferred for the merchandise loading?

Mr. MAXWELL: I should think a box car, although I do not think there is much difference between a box car and a good clean refrigerator. I think they are suitable.

Mr. WALTER: Do you have any A. R. T. refrigerators, with collapsible tanks? In other words, those collapsible tanks are a feature in determining whether you would so load refrigerators or not.

Mr. MAXWELL: I cannot answer that. Mr. Kooser is here and he can tell you. I don't know whether we have any collapsible tank cars or not.

Mr. WALTER: Did you hear the testimony yesterday with
104 reference to the loading of salt in packers' cars at Detroit?

Mr. MAXWELL: No, I was not here.

Mr. WALTER: Do you know whether any salt was loaded in A. R. T. cars?

Mr. MAXWELL: I think we loaded up some refrigerators for awhile. We had nothing else for a short time there and we loaded some of those because we were so hard up for cars. We tried to take care of the business by loading some refrigerators.

Mr. WALTER: Do you know whose refrigerators they were, whether they were A. R. T. or not?

Mr. MAXWELL: I think they were anybody's that we could lay onto there.

Mr. WALTER: Do you know anything about protests made against that?

Mr. MAXWELL: We would soon hear from this. I know we did.

Mr. WALTER: Do you know after that protest whether any refrigerators in fact were used for the transportation of salt?

Mr. MAXWELL: I think the situation changed pretty shortly

105 after that, and it was only a temporary emergency matter to load those cars anyway.

Mr. WALTER: Ordinarily they would not be loaded?

Mr. MAXWELL: No, sir; just an emergency to try to take care of the business coming out of a mine there every day, and probably we did not have enough box cars at the time.

Mr. WALTER: That is all.

Commissioner McCHORD: Do you want to ask Mr. Maxwell anything further?

Mr. BOYLE: We did not know Mr. Maxwell was an operating man. We would like to ask him a few questions of an operating character.

Commissioner McCHORD: Go ahead and ask him.

Mr. BOYLE: What interest has the Wabash Railroad in the A. R. T. Company?

Mr. MAXWELL: We have got about 50 per cent or a little less of the stock, a little less than 50 per cent interest.

Mr. BOYLE: The remainder is owned by the Missouri Pacific System, isn't it?

Mr. MAXWELL: Yes, I think so.

Mr. BOYLE: That makes that all in the nature of a car pool, doesn't it, so far as the Wabash, the Missouri Pacific and Iron Mountain are concerned?

106 Mr. MAXWELL: Yes, those two or three roads, those two roads.

Mr. BOYLE: Has it or not been successfully operated?

Mr. MAXWELL: I think it has the last two or three years, yes.

Mr. BOYLE: And the equipment of the A. R. T. Company frequently gets off the line of either the Wabash or the Iron Mountain, or the Missouri Pacific?

Mr. MAXWELL: Yes.

Mr. BOYLE: So it is not always at home. Why would it not be practicable for the railroads to own private cars and own them through some sort of a pooling arrangement—I don't expect an answer in detail, I just want a general answer giving your ideas.

Mr. MAXWELL: Offhand, I should think that might in the course of time work out, something of that sort. It might be practicable, something of that kind.

To give you an illustration of this particular thing, we have a pretty heavy A. R. T. equipment. Now, they have got a rush of peaches or something of that sort, and all of the cars are gone down to Texas and we claim that they are not taking care of our dairy business up here. We cannot even get enough to go around at that time of the year, a few months, while that product
107 is going to the market. It would take a tremendous equipment to handle the thing generally.

Mr. BOYLE: It would take a considerably larger pool than the three lines that we have referred to.

Mr. MAXWELL: I mean the whole country.

Mr. BOYLE: Do you know anything about the Pacific Fruit express and its operation?

Mr. MAXWELL: No.

Mr. BOYLE: Do you think the question of return upon investment in private cars should be paramount to the rental that the user of the equipment should pay for the benefit he derives from its use?

Mr. MAXWELL: I think you cannot get property for public use unless you are going to pay a return upon the capital invested, because people will keep out of it unless there is a return in some way. As to the public, they are not paying enough in a good many cases for these refrigerator cars, they are being wasted.

Mr. BOYLE: How so Mr. Maxwell?

Mr. MAXWELL: A few years ago we hardly ever loaded any apples out in this country in September or October, those months
108 along in the fall. Now, every fellow must have a refrigerator car, and so it goes, they take the most expensive you have got and never give you a cent for it, and they don't really need it, those fellows. There should not be one of those cars used without payment of something for it. We ought to have a \$5 penalty as compared to the box car.

Mr. BOYLE: What do you think of the payment for the use of private equipment on a mileage basis, which is the same loaded and empty, looking at it from the railroad point of view, considering the class of service that you get. Do you think it should pay for both loaded and empty mileage?

Mr. MAXWELL: Well, I have — gone into that or made any study of it. I think under any conditions this high class equipment you have got to operate pretty lively compared with your box cars and your coal cars. You have got to class it up with those expidited commodities, your other commodities you would probably have to treat about the same.

Mr. BOYLE: Take your refrigerators, your A. R. T. refrigerators, they make a very small percentage of empty movement over your road, whereas other privately owned refrigerators make a greater percentage of empty movement. Which of those two refrigerators
is worth more to your company?

109 Mr. MAXWELL: I should say the one that you can get the most loading out of.

Mr. BOYLE: Then it is fair to the railroad company who pays the rental charge on a loaded and empty mileage basis, on the gross mileage basis loaded and empty?

Mr. MAXWELL: I would not attempt to—I don't think I can answer with any degree of intelligence.

Mr. BOYLE: Mr. Maxwell, it appears that the *diary* cars make a considerable smaller mileage per day than the meat cars operated now on a mileage basis. You pay great deal more for holding a refrigerator car one day, I mean your car one day than you do a *diary* car one day. Do you think that is altogether fair?

Mr. MAXWELL: I think that depends upon the demand. When our demand is as active as it is at times, I think the A. R. T. company carry a larger equipment than where they require them for their business for the year around. They have got a lot — money invested to take care of such business that is just a spasm, just goes for a month, and then drops off.

Mr. BOYLE: Eliminate the A. R. T. and take in your *diary* service, it is a fact that *diary* refrigerator cars make a smaller
110 number of miles per day than your refrigerators?

Mr. MAXWELL: That is easy to explain, isn't it?

Mr. BOYLE: I don't know, what is your explanation?

Mr. MAXWELL: You take it out here at Creston, or some place out in Iowa and you may be waiting a week for the man that has got the car to gather up a carload of poultry and eggs and then move it, whereas you have got a pretty steady movement, they can keep it going pretty steadily except in the case of a slump, and then it could drop down some.

Mr. BOYLE: Isn't it a fact that they have solicitors out for almost all of this *diary* business and that there is very little time wasted in the cars laying around stations?

Mr. MAXWELL: I don't know, in the movement of the eastern cars, they may not be so, but go out into this country and go to any point out there and you will find probably a week's supply of cars awaiting there, M. D. T's., all kinds of cars, and you will find a week's supply in there at those places as a rule.

Mr. BOYLE: Those cars are in the railroad service at that time at the place of loading. The owner of those cars is getting no return at all — they are standing there waiting for the railroad's
111 patron to get his stuff into the equipment that the owner has furnished the railroad. He will get no return on that investment there while the car is lying idle. Is he responsible for that man in the interior delaying a little in the concentration of his stuff in getting his shipment ready to go, the owner of this refrigerator?

Mr. MAXWELL: If the owner of the car wants the business, he is willing to *tune* that chance and send it there.

Mr. BOYLE: I understand you can use some of these *diary* refrigerators for various things. They may be used in the fruit business, I understand?

Mr. MAXWELL: Yes.

Mr. BOYLE: In answer to Mr. Walter's question you stressed particularly upon the question of the return on the investment. The *amn* has invested practically the same in his refrigerator for these shipments, *diary* shipments, as the meat car, possibly not so much, but almost a similar amount, and his car stands idle a great portion of the time. On this mileage basis he gets paid a return for it, and he is not responsible for the delay. I will ask you whether
112 or not under those conditions you will still stress your return upon the investment theory?

Mr. MAXWELL: I should say that that being the fact, the daily movement of the car is more a matter of efficiency.

Mr. BOYLE: I should have said return upon the investment theory, and the payment for this car at a mileage basis.

Commissioner McCHORD: I guess you will hardly be able to settle that by this witness. The courts have been laboring with it for a number of years.

Mr. BOYLE: Mr. Maxwell, I don't — whether the tariffs of your

road usually provide, but a great many of the roads provide a package rate for refrigeration of fruit and vegetables, or a flat rate per car.

Mr. MAXWELL: No, unfortunately we haven't any. I think there is a great waste of refrigerator car- as expressed awhile ago, when you let men in Iowa, Missouri and Illinois take them and load apples in when there is no occasion for it, and a thousand and one things.

Mr. BOYLE: I don't believe you understand the question. I mean you take—

Mr. MAXWELL: You take that L. C. L. package stuff, we don't get any of that.

Mr. BOYLE: No, I don't mean that. I mean you take the 113 cars containing fruit and vegetables which is ordinarily made to pay either on a per car basis or per crate, or icing basis, do you charge for the ice on a tonnage basis for the quantity of the ice supplied?

Mr. MAXWELL: We do all of that practically for nothing, it is included in the freight rate. We load a vast number of these refrigerator cars of our own here and ice them, and at St. Louis and all of these places, and we do not get anything for them.

Commissioner McCHORD: Do you consider that in fixing your freight rate?

Mr. MAXWELL: I think it is all wrong not to get a distinct charge for that special icing service.

Commissioner McCHORD: But you do include it in fixing your freight rate?

Mr. MAXWELL: We make the same rate for one case of eggs of 100 pounds as we charge for 400 cases, or a carload. That is in effect today. That is one of the fallacies of the freight rates, in my opinion. I think there ought to be a distinction. You go along over the country, open a car and take one case of eggs, put it in there, protect it, take it to New York at the same price that you take 400, and it is a waste of time, an absolute waste.

114 Mr. BOYLE: Do you furnish refrigeration on shipments of that kind?

Mr. MAXWELL: Yes, sir, we furnish all of that in the freight rate.

Mr. BOYLE: If it is below 15,000 pounds.

Mr. MAXWELL: If it is 100 pounds of freight we take it at the same price as we do a carload.

Mr. BOYLE: Do you not make a charge in addition to the freight rate for the icing?

Mr. MAXWELL: We do not, that is all included.

Mr. BOYLE: Less than carloads and carloads?

Mr. MAXWELL: Yes, sir.

Mr. BOYLE: The practice on your road then differs materially from that on other roads?

Mr. MAXWELL: No, that is the practice in all of the Official Classification Territory. There may be some minor exceptions down east, but that is the practice all over this territory.

Mr. BOYLE: Do you think, Mr. Maxwell, that the charges for icing should be on a tonnage basis, so much per ton for the amount

115 of ice furnished, or on a per car basis, or so much per package?

Mr. MAXWELL: I think if carload freight, it ought to be on a per ton basis.

Mr. BOYLE: For the amount of ice furnished?

Mr. MAXWELL: Yes, sir.

Mr. BOYLE: How is the shipper to determine how much ice is furnished?

Mr. MAXWELL: A good many of them are able to tell you how much to put in at certain stations. Others leave it to furnish the amount necessary to properly protect the freight? I think that the men that are doing a daily business at those stations know how much it requires to run it as a rule to the next icing station.

Mr. BOYLE: I have a few more questions I want to ask Mr. Maxwell.

Commissioner McCHORD: We will take a recess and get back here at one-third.

Whereupon at 12:40 P. M. a recess was taken until 1:30 P. M. of the same day.

116

After Recess.

W. C. MAXWELL was recalled as a witness, and having been previously sworn, testified further as follows:

Mr. BOYLE: Mr. Maxwell, just one question with respect to this interest on investment. Do you base that statement on a consideration of the original or first cost of the car, or its value upon physical examination as of today?

Mr. MAXWELL: I should think a very fair valuation on the property is the proper basis, say a fair value on the property.

Mr. BOYLE: What is the fair valuation, the value today?

Mr. MAXWELL: I should think that would have a good deal to do with it.

Mr. BOYLE: What else would have anything to do with it?

Mr. MAXWELL: Do you think my opinion would be of much value on that?

Mr. BOYLE: I do not know. You gave it on cross-examination.

Mr. MAXWELL: I gave it as a general proposition, that any business ought to pay a fair return, otherwise you will not get the money.

117 Commissioner McCHORD: He wants to know on what.

Mr. MAXWELL: On the fair valuation of the property.

Commissioner McCHORD: As the property stands today?

Mr. MAXWELL: Yes.

Mr. BOYLE: Going back to the icing for a moment, at Moberly and Decatur, where your company operates its own icing station, you have been able to determine the cost of the ice harvested, stored and handled from your house into the bunkers, including shrinkage?

Mr. MAXWELL: Yes.

Mr. BOYLE: And have actually furnished those figures to the Commission; that is true, is it not?

Mr. MAXWELL: We furnished them a complete statement, as I understand it, of our cost for about three years, showing where we got the ice, and what we got out of it, and so forth.

Mr. BOYLE: You were in a position to furnish that information for all icing stations operated by you?

Mr. MAXWELL: Yes.

Mr. BOYLE: And those seem to be about the only two.

Mr. MAXWELL: Yes, those are the only two.

Mr. BOYLE: So that if the Commission undertook the consideration of the reasonableness of the icing charge made to shippers, your company has been able to supply us with information respecting the cost of the service when performed by yourself.

Mr. MAXWELL: We have done that already, that is through your reports—

Mr. BOYLE: Yes. Can you do that with respect to the icing performed at Delray.

Mr. MAXWELL: No.

Mr. BOYLE: At which point, of course, ice is furnished for shipments moving over your line, and charges assessed under tariffs published by you and filed with the Interstate Commerce Commission, such charges being collected by your road or connections, and in turn handled through the various lines back to the company performing the service at Delray.

Mr. MAXWELL: Of course, the Delray house shows that the work is being done at a very reasonable if not low, price, and if we could shift our other houses to somebody who would do it on the same basis we would probably make money by doing that.

Mr. BOYLE: That however, does not quite answer the question.

119 Commissioner McCHORD: Read the question.

(The question was read as above reported.)

Mr. BOYLE: That was a continuation of the first question, and your answer to that is no, I assume, that in spite of the fact your company publishes tariffs naming a charge for service to be performed at Delray and collects through its connections or its own agents the charges named in this tariff, you are not in a position to give us figures as to the cost of operating at Delray?

Mr. MAXWELL: No, I say we are not.

Mr. BOYLE: It is your understanding, is it not, that the Delray icing station in reality is owned by more than one of the packers?

Mr. MAXWELL: I got that impression that there are three—or several of them interested.

Mr. BOYLE: The reports to the Commission so show, and we will be able to develop it. I do not think there is any dispute about that at all.

Mr. MAXWELL: I think not. It is a fact, probably.

Mr. BOYLE: There are some packers who apparently have no interest in that station. That is also true?

Mr. MAXWELL: I think so.

120 Mr. BOYLE: What do you think of the general proposition of a company which is a shipper of packing house products performing a service upon similar shipments of its competitors.

Mr. MAXWELL: I should think there would not be any serious objection to it if the railroads thoroughly checked it and saw that the service was performed without any discrimination. I do not think we have done that as fully as we should at Delray.

Mr. BOYLE: Is there not a chance there for the operation of the human element and for a little favoritism to be exercised; cars, for instance, of the owning company being favored as compared with the cars of the competing company?

Mr. MAXWELL: Well, during my eight years of experience with the Wabash Road since that house has been there, we have had practically no complaint except from one firm. You understand there are thousands of cars of dairy freight and all kinds of business going by there and iced there.

Mr. BOYLE: But this one concern is a competitor of the owning company.

Mr. MAXWELL: Yes.

Mr. BOYLE: The dairy shipments may not be. That is
121 true, is it not?

Mr. MAXWELL: Yes.

Mr. BOYLE: So there is a chance there for the operation of that human element, whether or not it actually does operate?

Mr. MAXWELL: Yes.

Mr. BOYLE: Mr. Maxwell, I believe you were asked whether the Wabash Railroad could own sufficient refrigerators to take care of all of the business that it might be called upon to handle at all times, and that you answered that it would be an economic waste, or words to that effect.

Mr. MAXWELL: I think we would have to have a great many more for certain months of the year than are necessary for our business.

Mr. BOYLE: And there would be a resulting economic waste?

Mr. MAXWELL: I should think there would, yes.

Mr. BOYLE: If all of the private cars were pooled and owned by railroads, or maybe a private car arrangement, but all pooled under a common directorate, would it not be possible with efficient management to handle the present volume of business with a less number of cars.

Mr. MAXWELL: I think it might reduce them some, yes.

122 Commissioner McCHORD: Would that be true as to all freight cars?

Mr. MAXWELL: I think so, yes, sir.

Mr. BOYLE: And thereby reduce the investment in equipment?

Mr. MAXWELL: I think so. I think it would work out in that way. It is a little like your Regional Bank proposition.

Mr. BOYLE: The American Refrigerator Transportation Company is the car line in which the Wabash is interested?

Mr. MAXWELL: Yes.

Mr. BOYLE: I think it is already developed here that the Refrigerator cars of that company operate over your line and carry a great deal of dairy business?

Mr. MAXWELL: They carry quite a bit of dairy business, yes.

Mr. BOYLE: What are the principal commodities carried in the A. R. T. cars on your line?

Mr. MAXWELL: Well, fruit and dairy products, and they even handle ice in those cars; cranberries, oysters; in fact they are gradually extending; they ship pickles now, and all kinds of things that the never used to get into those cars.

123 Mr. BOYLE: What kind of pickles?

Mr. MAXWELL: The kind you eat on the table down here.

Mr. BOYLE: In barrels?

Mr. MAXWELL: Yes, barrels and glass, both.

Mr. BOYLE: What is the occasion for using refrigerator cars for pickles?

Mr. MAXWELL: Well, they probably think it is a little nicer and keeps them a little better. Box cars used to be good enough.

Mr. BOYLE: Do you pay $\frac{3}{4}$ of a cent a mile on all that movement?

Mr. MAXWELL: We pay the A. R. T. a cent a mile.

Mr. BOYLE: Is not that an economic waste, Mr. Maxwell.

Mr. MAXWELL: I think you ought to shut a lot of people off from using refrigerator cars or make them pay something for it. Take the last cars this company has bought, they weigh 49,000 pounds and cost a big lot of money; and you put a lot of ice in on top of that and you have a nice lot of dead weight to move around. Besides, a very expensive tool, when you might be using one which is not so expensive.

Mr. BOYLE: Do you know whether or not it is a fact that the packers frequently load freight of this nature in their cars?

124 Mr. MAXWELL: This dairy freight.

Mr. BOYLE: Not dairy freight, but things which are analogous to pickles, canned goods—

Mr. MAXWELL: I do not think they do much of it.

Mr. BOYLE: And soap?

Mr. MAXWELL: They do very little of that, is my impression.

Mr. BOYLE: Do you know, Mr. Maxwell?

Mr. MAXWELL: I have heard very little of that. There may be some instances.

Mr. BOYLE: Have you made an examination into that?

Mr. MAXWELL: No, I have not, but I should say it is very small.

Mr. BOYLE: What service, other than the furnishing of refrigerator cars does the Wabash Railroad receive from the American Refrigerator Transit Company, for which it pays its commissions?

Mr. MAXWELL: Well, they solicit the traffic.

Mr. BOYLE: What character of traffic?

Mr. MAXWELL: Any traffic of a perishable nature handled in their cars.

125 Mr. BOYLE: Suppose you handle pickles in their cars?

Mr. MAXWELL: Well, they would claim a commission on that if they had secured it.

Mr. BOYLE: Then you would pay them a commission on practically all commodities moving in their cars?

Mr. MAXWELL: Yes, we have a regular list. There are some few things excluded.

Mr. BOYLE: A list of commodities on which you pay them commissions?

Mr. MAXWELL: Yes, a printed list.

Mr. BOYLE: Pickles included?

Mr. MAXWELL: I think they finally got pickles in on us.

Mr. BOYLE: Have you a copy of that list?

Mr. MAXWELL: Mr. Kooser, the general manager, is here, and he would be glad to furnish it, I suppose, when he goes on the stand.

Mr. BOYLE: What service does the Wabash Railroad receive from the Chicago Refrigerator Despatch, on which it pays them a commission of ten per cent?

Mr. MAXWELL: We are not paying them anything. That arrangement is all dead.

Mr. BOYLE: What service did the Wabash receive from
126 that line during the year ending June 30th, 1912, for which it did pay \$1700.

Mr. MAXWELL: They had some solicitors out for business.

Mr. BOYLE: Do you know how many solicitors they had out?

Mr. MAXWELL: I could not tell you offhand, no, sir.

Mr. BOYLE: You paid them however, during the year ending June 30th, 1912, \$1712.65.

Mr. MAXWELL: 10 per cent, I believe, on the traffic they secured, was it not?

Mr. BOYLE: Was this traffic all secured by the soliciting force of the Chicago Refrigerator Despatch?

Mr. MAXWELL: Yes.

Mr. BOYLE: When was that arrangement discontinued?

Mr. MAXWELL: I think you will find that 1912 payment is a rather old one; I think we quit before that, and that is settling up something probably that we owed them back of that and we could not dig up the money probably until that time.

Mr. BOYLE: The Shippers Refrigerator Despatch, Mr. Maxwell, was paid commissions aggregating almost \$9,000.00 up to June 30th, 1912. What service was rendered for that commission?

Mr. MAXWELL: They had a soliciting force out, soliciting
127 the business.

Mr. BOYLE: Part of the commission was based on 12½ per cent and the remainder on 10 per cent. Why was the change made?

Mr. MAXWELL: 12½ per cent in their own cars, and 10 per cent in other cars that they could get the use of. 12½ per cent on their

own cars and 10 per cent on some of the foreign cars that they secured the business in.

Mr. BOTLE: They solicited it all?

Mr. MAXWELL: Yes.

Mr. BOTLE: And they secured 2½ per cent more when it moved in their own cars than when it moved in foreign cars?

Mr. MAXWELL: Yes.

Mr. BOTLE: Aside from that they were paid a rental?

Mr. MAXWELL: They were paid the current mileage rate, you, sir.

Mr. BOTLE: Why should there be a difference then in the commission as between shipments moving in their own cars and in foreign cars, when the use of their own cars is supposed to be taken care of in the mileage rate.

Mr. MAXWELL: We tried to pay them enough to keep them 129 in the field, to pay those men to get out and secure the business. As you know, we have modified that arrangement.

You have got all our records; and they are now handling the business through the A. R. T. Company, and we pay them \$200 a month, and that specifies the employment of a general manager, two traveling freight agents and one man on the street here in Chicago, and so many office men. It is not anything like enough to pay the salaries of the men handling the business.

129 Mr. BOTLE: Whose employees are those?

Mr. MAXWELL: They are really the employees of the A. R. T. Company.

Mr. BOTLE: Is there anything done by any of those men that would not be done by employees of the Railroad?

Mr. MAXWELL: Employees of the railroad?

Mr. BOTLE: Yes, sir.

Mr. MAXWELL: I don't think so, no. I think that all that work could be done by the soliciting force of the railroad direct.

Mr. BOTLE: What is the use for the existence of the dairy lines?

Mr. MAXWELL: Most of them are now just straight car lines, as you understand.

Mr. BOTLE: Are any of the employees of the Chicago Refrigerator Dispatch or the Shippers Refrigerator Dispatch carried on the pay rolls of your company?

Mr. MAXWELL: No, sir.

Mr. BOTLE: There are employees of the Shippers Refrigerator Dispatch carried on the pay roll of the A. R. T. Company, are there not?

130 Mr. MAXWELL: So much a month, \$2000 for the service of all of their employees.

Mr. BOTLE: What officials of the Shippers Refrigerator Dispatch are carried on the pay roll of the A. R. T. Company?

Mr. MAXWELL: Mr. Crawford was the general manager. He died about a month ago, and Mr. G. B. Allright is now general manager, and they have two traveling men. I cannot recall their names at this minute, one man on the street here in Chicago. They have a capable office man and one or two others, I think a stenographer.

about as small an organization as they can have to carry on the business.

Mr. Brown: Mr. Woodruff, about what date was it that these employees that you mention who were formerly connected with the *Shippore Refrigerator Dispatch* were put on the pay roll of the A. R. T. Company?

Mr. Woodruff: I think the contract was made either in November or December, 1912.

Mr. Brown: Are passes now issued by your road to the traveling agents of these dispatch lines?

Mr. Woodruff: The A. R. T. furnishes the traveling pass, and the manager of the *Shippore Refrigerator* act as their employees, please, you.

110 Mr. Brown: You regard the A. R. T. as a common carrier?

Mr. Woodruff: It distinctly belongs to the railroad.

Mr. Brown: What authority was there for sending passes to the *Shippore Refrigerator Dispatch* prior to the time that they acted on the rolls of the road?

Mr. Woodruff: They have been with the *Wabash* road collecting freight for twenty-five years, there where I come. I think that has always been considered largely as employees. These passes are all stamped, "Only good when traveling on business of the *Wabash Railroad*," given with that understanding specified.

Mr. Brown: What business of the *Wabash Railroad* would they be traveling on?

Mr. Woodruff: Why, they could go up here to Burlington, Wisconsin, and get some of this condensed milk, or go out here to Cedar Rapids and get some of the dairy freight. That is one business to go and haul up that business. If they do not do it, I would get somebody else.

Mr. Brown: You regard these people as your agents?

Mr. Woodruff: Yes, they are our agents, they don't work for anybody else.

Mr. Brown: Do you know whether or not the A. R. T. Company reports to the Interstate Commerce Commission?

Mr. Woodruff: No, I do not.

Mr. Brown: Do you know whether the A. R. T. has any traffic with the Interstate Commerce Commission?

Mr. Woodruff: If they have any traffic, they are certainly that with the Commission. I don't believe they have any. I think that is all done by the railroad.

Mr. Brown: That is all, Mr. Woodruff.

Mr. Warren: Does this one card village extend all the way over your line?

Mr. Woodruff: With our own company.

Mr. Warren: With the A. R. T.?

Mr. Woodruff: Yes, sir.

Mr. Warren: I believe you and Mr. Brown are more familiar with the financial and operating statistics than you are?

Mr. Woodruff: Yes, sir; he is here and I suppose he will get on the stand before he leaves.

Mr. WALTER: Some questions we want to ask we will reserve for Mr. Kooser.

Mr. VEEDER: Are cars of the Sulzberger & Sons Company ice- at Delray?

Mr. MAXWELL: Yes, everybody's cars.

133 Mr. VEEDER: Did you ever have a complaint on them?

Mr. MAXWELL: Never had a complaint.

Mr. VEEDER: Or from Morrell & Company?

Mr. MAXWELL: No, sir.

Mr. VEEDER: Dole & Company?

Mr. MAXWELL: None of them.

Mr. VEEDER: Kenyon & Company, Morris & Company, Sinclair & Company?

Mr. MAXWELL: I don't remember any complaints.

Mr. VEEDER: Armour & Company?

Mr. MAXWELL: No, sir.

Commissioner McCHORD: You may stand aside.

(Witness excused.)

L. B. PATTERSON was called as a witness herein, having been first duly sworn, testified as follows:

Direct examination.

Mr. BOYLE: Mr. Patterson, what is your full name?

Mr. PATTERSON: L. B. Patterson.

Mr. BOYLE: Your position and resident-?

Mr. PATTERSON: Chicago is my residence. I am connected with different interests, iron business, bread business, ice business.

134 Mr. BOYLE: With what Ice Company?

Mr. PATTERSON: With the People's Ice Company in Omaha, and the Hygienic in Chicago, and the Hornell Ice & Cold Storage Company of New York.

Mr. BOYLE: The Hornell Ice & Cold Storage Company of Hornell, New York?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Let us have the first one, what was the first one?

Mr. PATTERSON: The People's at Omaha.

Mr. BOYLE: Upon the rails of what carrier is that plant located?

Mr. PATTERSON: We are on the Illinois Central and Chicago & North Western and Union Pacific.

Mr. BOYLE: Have you a contract with any of those roads for furnishing ice?

Mr. PATTERSON: I have a contract with the Union Pacific.

Mr. BOYLE: For how long is that contract to run?

Mr. PATTERSON: It runs about seven years.

Mr. BOYLE: You are an officer of the People's Ice Company?

135 Mr. PATTERSON: I am president of that company. My brother is the vice-president and Mr. Wood is the secretary.

Mr. BOYLE: How long have you been engaged in the ice business at any of these points, Mr. Patterson?

Mr. PATTERSON: At Omaha, about ten years, Chicago, three years, Hornell about six months.

Mr. BOYLE: With what other businesses have you been connected?

Mr. PATTERSON: I was formerly vice-president of the National Packing Company.

Mr. BOYLE: Were you vice-president of the National Packing Company at the time of its dissolution?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: For how long prior thereto?

Mr. PATTERSON: Eight years.

Mr. BOYLE: Were you ever in the employ of any of the other packing houses?

Mr. PATTERSON: Yes, sir; in the employ of Swift & Company.

Mr. BOYLE: At what time were you employed by Swift & Company?

Mr. PATTERSON: Previous to going with the National Packing Company.

Mr. BOYLE: For how long?

136 Mr. PATTERSON: About fifteen years, something like that.

Mr. BOYLE: How long did you say with the National Packing Company?

Mr. PATTERSON: Eight years.

Mr. BOYLE: What was the approximate date of the dissolution of the National Packing Company?

Mr. PATTERSON: I think I left there in July, 1912.

Mr. BOYLE: Your icing station at Omaha, is the People's Ice Company?

Mr. PATTERSON: The People's Ice & Cold Storage Company.

Mr. BOYLE: In which you have been interested for ten years, I believe?

Mr. PATTERSON: Yes, sir; my brother runs it.

Mr. BOYLE: Now, the second station that you named.

Mr. PATTERSON: Well, I am in the ice business in Chicago, but if you want the icing of cars, we do not ice cars, but very few here. It is not an icing station. It is in the ice business in the City of Chicago.

Mr. BOYLE: Commercial business generally?

Mr. PATTERSON: The same as Omaha is a commercial business; but we ice cars there for the Union Pacific.

137 Mr. BOYLE: What is the name of your company here in Chicago?

Mr. PATTERSON: Hygienic Ice Company.

Mr. BOYLE: And you have had that how long, Mr. Patterson?

Mr. PATTERSON: Three years.

Mr. BOYLE: Now, the Hornell Company?

Mr. PATTERSON: We have been operating that since the 12th of June last year.

Mr. BOYLE: That is on the Erie Railroad, isn't it?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Mr. Patterson, are all of these ice companies corporations?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: By whom is the majority of the stock owned in the Omaha plant?

Mr. PATTERSON: By myself and my brother.

Mr. BOYLE: Who is the largest minority owner?

Mr. PATTERSON: The stock is scattered all over in small lots. He and I own the big end of it.

Mr. BOYLE: What percentage would you say that you both own?

Mr. PATTERSON: We own close to half of it. Mr. Wood is
138 a large stockholder, the secretary of the company.

Mr. BOYLE: What is that?

Mr. PATTERSON: Mr. Wood is a large stockholder the secretary of the company.

Mr. BOYLE: The Hygienic Ice Company?

Mr. PATTERSON: In Chicago?

Mr. BOYLE: Yes, in Chicago?

Mr. PATTERSON: That is scattered. My brother and I are large holders in that. There are probably 150 or 200 stockholders.

Mr. BOYLE: What percentage do you and your brother own?

Mr. PATTERSON: We own about 25 or 30 per cent of that.

Mr. BOYLE: Who is the largest minority holder?

Mr. PATTERSON: I think Mr. Cowin, president of the company, Frederick Cowin.

Mr. BOYLE: The Hornell Company?

Mr. PATTERSON: Hornell, I am the largest owner in that, and Mr. Cowin is the next largest. He is president of the company.

Mr. BOYLE: What other business is Mr. Cowin connected with?

Mr. PATTERSON: He is engaged in looking after these ice
139 companies, president.

Mr. BOYLE: What other business is your brother engaged in?

Mr. PATTERSON: None other.

Mr. BOYLE: Does any one connected with Swift & Company now own any interest in the Omaha plant?

Mr. PATTERSON: No, sir; I don't think so, not that I know of. I do not recall any just now.

Mr. BOYLE: In the Chicago plant?

Mr. PATTERSON: No, sir; I don't think they do. It is scattered very largely, about 150 or 200 stockholders in the Chicago concern.

Mr. BOYLE: Do any of them have any stock in Swift & Company?

Mr. PATTERSON: In what?

Mr. BOYLE: In Swift & Company's packing business here, Swift Refrigerator Car Line or Swift Livestock Line?

Mr. PATTERSON: No, sir.

Mr. BOYLE: How about Hornell, New York?

Mr. PATTERSON: Hornell, I am the largest owner. I own practically half of it.

Mr. BOYLE: Is there any one connected with the several interests named that owns any stock in the corporations stated?

140 Mr. PATTERSON: None that I know of just now.

Mr. BOYLE: Is this stock owned by you outright, or held in trust?

Mr. PATTERSON: Owned by me outright, what I have not got money borrowed on, something like that.

Mr. BOYLE: Who votes the stock, do you vote it?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Mr. Patterson, the icing station at Hornell will be largely used for the purpose of refrigerating commodities, icing commodities moving in refrigerator cars, will it not?

Mr. PATTERSON: Yes, sir; a great deal of it. We have a cold storage plant there in connection with it.

Mr. BOYLE: What determined you in the selection of Hornell as a favorable place at which to locate an icing station Mr. Patterson?

Mr. PATTERSON: On account of the large volume of fruit business the Erie road does. It has always been quite a large icing station and I have had it in mind for some time with the idea of locating there.

Mr. BOYLE: From what source do you obtain you- supply
141 of ice at Hornell?

Mr. PATTERSON: We manufacture our ice.

Mr. BOYLE: Do you think it would be profitable to establish icing stations further south?

Mr. PATTERSON: If you think it would be profitable to establish icing stations further south?

Mr. Patterson: If you could get other lines of business connected with it, the same as we have at Hornell. We have storage there to take care of that celery business in that locality. If you had something like that it would be profitable, if you get the right price for it.

Mr. BOYLE: Mr. Patterson, will there not be a great deal of packing house business iced and re-iced at Hornell?

Mr. PATTERSON: Probably 25 or 30 per cent of the business will be packing house business. A larger portion is the fruit business that goes through there.

Mr. BOYLE: Were you or were you not influenced in the establishment of a station at Hornell by your experience in the packing business to the extent that you considered it a profitable investment?

Mr. PATTERSON: Well, I thought from what I had seen about the business that they carried—I have had a little experience in handling fruit business, that is, the icing of fruit cars for the Union

142 Pacific, and I figured that if I could get on a line that carried a heavy line of fruit, that I could do quite a business, not from a packing standpoint, because there is not so much in that as there is in the fruit business.

Mr. BOYLE: Why is there not as much in it?

Mr. PATTERSON: You have to furnish salt.

Mr. BOYLE: It costs more, doesn't it?

Mr. PATTERSON: It costs more to ice a packing house car than it does a fruit car.

Mr. BOYLE: And the profit derived, of course, from the operation would be less?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Mr. Patterson, your station at Hornell has been operated now about a year and a half?

Mr. PATTERSON: No, about six months.

Mr. BOYLE: June, 1913?

Mr. PATTERSON: June, 1913, yes.

Mr. BOYLE: Your contract with the Erie Railroad, however, was executed a year before, wasn't it?

Mr. PATTERSON: Yes, sir; about a year previous to that.

Mr. BOYLE: Have you made any figures showing the cost of operating that station yet?

143 Mr. PATTERSON: No, sir; I have not.

Mr. BOYLE: Couldn't such figures be compiled, Mr. Patterson, to show the cost of the ice placed in the bunkers of cars?

Mr. PATTERSON: We could get up figures, I suppose, you would have to take it a year though to do it, a year's business, so as to show, because today we are losing money at it, because the cars take so little ice, and we have got to employ the help there to do the work, and it could be showing a *loss*. We would have to take the entire twelve months to arrive at a fair figure.

Mr. BOYLE: Should the Interstate Commerce Commission desire this data for the purposes of this investigation in determining or considering the reasonableness of icing charges to the shipper, would there be any objection on the part of your company to permitting a duly accredited official of the Commission to inspect your records, or assist you in the preparation of the cost?

Mr. PATTERSON: I do not see any objection to it. You would have to guess at it more or less, because I have got in connection with this plant that storage, which we run together. The machines that make the ice cool this cold storage place. They are all
144 operated together, and it would be a guess to some extent.

Mr. BOYLE: There would be a certain allocation of charges that might or might not be arbitrary?

Mr. PATTERSON: Yes, sir; that is what it would be.

Mr. BOYLE: But there would be no objection on the part of your company?

Mr. PATTERSON: There could not be any objection to it.

Mr. BOYLE: Mr. Patterson, are you familiar with the operation of any icing stations by Swift & Company?

Mr. PATTERSON: Not of late years. My knowledge of it goes back further than would be—

Mr. BOYLE: What were the principal icing stations run by Swift & Company during the time of your connection with them?

Mr. PATTERSON: I ran one for them myself.

Mr. BOYLE: Which one, Mr. Patterson?

Mr. PATTERSON: Roodhouse, Illinois, on the Alton.

Mr. BOYLE: Was it run by Swift & Company at that time?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: At what period was that?

Mr. PATTERSON: I think that was back in 1890.

145 Mr. BOYLE: What time?

Mr. PATTERSON: 1890.

Mr. BOYLE: How long did they operate it?

Mr. PATTERSON: That I could not tell you, Mr. Boyle.

Mr. BOYLE: Approximately how long to your knowledge?

Mr. PATTERSON: I should judge they operated it fifteen years, something like that.

Mr. BOYLE: Why did they abandon it?

Mr. PATTERSON: That I do not know.

Mr. BOYLE: Were you with them at the time it was abandoned?

Mr. PATTERSON: No, I was not, that is, I was not connected with the icing department at that time.

Mr. BOYLE: Were you with Swift & Company?

Mr. PATTERSON: I was located in Omaha I think at that time.

Mr. BOYLE: Do you know whether or not it was abandoned because of the failure to make a profit?

Mr. PATTERSON: No, I do not know the reason at all. I never knew of that, had no connection with it at all.

Mr. BOYLE: After its abandonment, it was taken over by the Chicago & Alton?

146 Mr. PATTERSON: Yes, sir.

Mr. BOYLE: And has since been operated by them?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Mr. Patterson, do you know whether the station was operated at a profit while you were connected with it?

Mr. PATTERSON: They told me it was not.

Mr. BOYLE: It was not?

Mr. PATTERSON: Yes. I had no figures. I had none of the details, the figures, I was only there as an operating man. I had no figures.

Mr. BOYLE: Who had the figures, Mr. Patterson?

Mr. PATTERSON: They were kept in Chicago.

Mr. BOYLE: In the Chicago office of Swift & Company?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Mr. Patterson, you have had a great deal of experience both in the packing business and in the icing business. The statement of your service in connection with those industries would so indicate?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: Based upon that experience, is it or is it not your opinion that icing stations should be operated by private car lines or shippers?

147 Mr. PATTERSON: I might be prejudiced in that Mr. Boyle. I want to be honest with you.

Mr. BOYLE: We are willing to allow for that.

Mr. PATTERSON: Some of them I would like to have if I could get hold of them. Others I would not want. I can answer it that way.

Mr. BOYLE: Suppose we look at the packing house side, disregard your ice connections and considered from your experience and information gleaned by you while in the packing business, do you think that the private car lines can operate icing stations to the best interests of all concerned?

Mr. PATTERSON: Well, I would say not.

Mr. BOYLE: You would say not?

Mr. PATTERSON: Yes.

Mr. BOYLE: What is your opinion as to the relative efficiency of a station operated by a private car line, and a station operated by a railroad?

Mr. PATTERSON: Well, I think my position is that I can give justice to the railroad and the shipper too. I think that has been proved at Hornell, that during the whole time we have been
148 operating there we have never had a complain- from a shipper. They have got inspectors there to do the work if they want it done, and we feel that we give them the service.

Mr. BOYLE: What is your opinion, Mr. Boyle, with respect to a shipper running an icing station, and at that station furnishing ice for his competitor's shipments? Do you think that conduces to the best of results?

Mr. PATTERSON: Well, I have never had any experience exactly, only my experience at Roodhouse there, when I was running the station myself, we were always told to treat everybody alike. Naturally if it had been a case between my own company and the other company I might have favored my own company.

Mr. BOYLE: There was always opportunity for that, was there not?

Mr. PATTERSON: There was not a great deal of opportunity. The cars were always set in on the platform, an Armour and a Morris and a Swift, and they would be all in together. If you were inclined to do honest work, there was no reason why you should discriminate unless you should deliberately discriminate.

149 Mr. BOYLE: What sort of instructions did you receive from the railroad when you were at Roodhouse?

Mr. PATTERSON: From the railroads?

Mr. BOYLE: Yes, when a car was set in for reicing?

Mr. PATTERSON: I don't recall that we had any instructions, Mr. Boyle.

Mr. BOYLE: Did the billing come to the icing station?

Mr. PATTERSON: No, that never came to the icing station. They would set in say 20 cars, and say "there are 20 cars to be iced", and we would ice them.

Mr. BOYLE: Mr. Patterson, for how long is this lease of yours at Hornell with the Erie?

Mr. PATTERSON: Twenty-five years.

Mr. BOYLE: Mr. Patterson, I have before me a copy of a lease which I will have you identify in a few minutes. I will ask you though whether these charges to the railroad by your company for the service are not those set out in the lease, section 7:

Where you ice shipments at Hornell for the railroad company you would charge the railroad company the same charge that the railroad makes to the shipper, but not less than \$2.50 per ton?

150 Mr. PATTERSON: Yes, sir; that is right.

Mr. BOYLE: Where the railroad makes no charge to the shipper, you charge \$2.50 to the railroad anyhow?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: For ice that you furnish the railroad company for its local use other than for refrigerator cars, \$1.25 per ton?

Mr. PATTERSON: That is for their depot use, yes.

Mr. BOYLE: For ice furnished the railroad company to be shipped from Hornell for use elsewhere, \$2 per ton F. O. B. plant?

Mr. PATTERSON: Yes, sir; that is correct.

151 Mr. BOYLE: Does your company also furnish salt to use in icing meat shipments?

Mr. PATTERSON: Yes, sir, we furnish salt.

Mr. BOYLE: Is that included in the \$2.50 charge?

Mr. PATTERSON: Yes, sir, in the \$2.50.

Mr. BOYLE: So you really furnish the salt free to the railroad, just as the railroad does to the packers?

Mr. PATTERSON: The same thing, yes.

Mr. BOYLE: And it costs you more, of course, than whenever you perform this service for packing house products than for any other products?

Mr. PATTERSON: Yes, sir.

Mr. BOYLE: I hand you what purports to be a copy of the lease between your company and the Erie Railroad, under which the icing station in Hornell is leased to you and by you operated, and ask you if that is not a true copy?

Mr. PATTERSON: I presume it is, without reading it; it has indications of being a true copy.

Mr. BOYLE: I did not expect you to read it all. I would like to offer that as an exhibit for the Commission, in connection with Mr. Patterson's testimony.

(The document so offered and identified, was received
152 in evidence and thereupon marked Commission's Exhibit No. 11, Witness Patterson, received in evidence January 22nd, 1914, and is attached hereto.)

Mr. BOYLE: We have nothing further of Mr. Patterson.

Mr. VEEDER: You say that your business in Omaha and Hornell, the icing station business, is conducted in connection with your commercial business.

Mr. PATTERSON: Yes.

Mr. VEEDER: Did the fact that you were operating a commercial business at those points, or intended to do so at Hornell, influence you in entering into an icing contract with the Erie Railroad?

Mr. PATTERSON: We had our ice business in Omaha when the Union Pacific matter came up, and I took it along with that. At Hornell I figured if I could get a cold storage with that celery business and the icing business together, I would have a fairly profitable proposition. That is what I figured on.

Mr. VEEDER: You stated that private car lines in your opinion cannot operate icing stations to the best interests of all concerned.

153 Did you mean by that that you thought railroads could operate the icing stations better than the car lines?

Mr. PATTERSON: I rather thought I could.

Mr. VEEDER: You rather thought you could?

Mr. PATTERSON: Yes, with my modesty in the matter.

Mr. VEEDER: You stated that your lease at Hornell is for 25 years?

Mr. PATTERSON: Yes.

Mr. VEEDER: That would seem to be a lease for a pretty long time. What was the reason for making the lease for such a long time?

Mr. PATTERSON: We had a heavy investment to put in there. We built a very large plant and we could not afford to put a plant in there or an investment of that kind for a shorter term than that.

Mr. VEEDER: How much of an investment have you at Hornell?

Mr. PATTERSON: We have something like \$400,000 invested there.

Mr. VEEDER: Your contract price for ice with the Erie is \$2.50 a ton. Is that the same as the price at which you are furnishing ice to railroads everywhere?

Mr. PATTERSON: We do not do much railroad icing. Our railroad icing business is a small portion of our business.

154 Mr. VEEDER: Do you furnish any ice elsewhere than at Hornell?

Mr. PATTERSON: We do, at Omaha.

Mr. VEEDER: Anywhere else?

Mr. PATTERSON: We occasionally sell a car here and there. We are in the ice business on a large scale in Chicago, and if the railroads want to buy any ice we will sell it to them, but we seldom sell it to them because we cannot compete with the natural ice.

Mr. VEEDER: Did you ever refuse to make a contract for the price of \$2.50; in other words, have you ever had occasion to refuse to make a contract with a railroad to supply ice because the \$2.50 would not be sufficient to cover what you considered the cost of operating a plant?

Mr. VEEDER: Of, yes. We refused a few of those propositions. It depends entirely on the location, whether it is any good to me or not.

Mr. VEEDER: Did you ever operate an icing station at Argenta, for the Missouri Pacific?

Mr. PATTERSON: No, sir.

Mr. VEEDER: Did you ever figure on taking a contract to operate at Argenta?

155 Mr. PATTERSON: I had it up at one time, yes, sir.

Mr. VEEDER: What was the proposed contract price at that point?

Mr. PATTERSON: I do not recall just what it was. I did not get far enough into it. I think it was around \$2.75 or \$3.00 a ton, or something like that.

Mr. VEEDER: Why didn't you enter into the contract?

Mr. PATTERSON: There was nothing else in connection with it, and the contract was too small. But it was afterwards taken up, I think.

Mr. VEEDER: Too small to enable you to conduct it at a reasonable profit?

Mr. PATTERSON: That is the way I figured it. It was taken up afterwards.

Mr. VEEDER: Did you ever figure on a contract with the Union Pacific at North Platte, Neb.?

Mr. PATTERSON: Well, I did not figure with them on a contract. They asked me if I would figure, I think, on a contract.

Mr. VEEDER: What was the price they offered there?

Mr. PATTERSON: They talked \$2.50.

Mr. VEEDER: Why did you refuse it?

156 Mr. PATTERSON: For the same reason as at Argenta.

Mr. VEEDER: At the station at Hornell, does the railroad company there supervise the icing which you do of their cars on their line?

Mr. PATTERSON: Yes.

Mr. VEEDER: Do they have an inspector stationed there regularly?

Mr. PATTERSON: Yes, sir.

Mr. VEEDER: Do any of the shippers of other car line companies whose cars are operated through Hornell, have regular inspectors there?

Mr. PATTERSON: Yes.

Mr. VEEDER: What companies?

Mr. PATTERSON: The P. F. E. have a man there, and I cannot recall the name of the other, it is the Santa Fe——

Mr. BOYLE: The Santa Fe Despatch.

Mr. PATTERSON: Yes, and Swift & Company and occasionally we have business from Cudahy and Armours and Morris.

Mr. VEEDER: That is all.

Mr. BOYLE: Can ice be furnished as cheaply in the west and the far west as it can in this section and in the east?

Mr. PATTERSON: I do not think so, no, sir.

157 Mr. BOYLE: That might be a deterrent to anyone going out there?

Mr. PATTERSON: It is influenced by weather conditions, with the natural ice, which is in competition with the manufactured ice. The ice manufactured is a coal and water proposition in the east. It is what you can buy your coal for and your water cost. In the west I understand fuel is extremely high. I have never been into it, but it costs considerably more, that is my understanding.

Mr. BOYLE: How about the salt which you furnish too, at Hornell, for instance, is not that right near the salt regions?

Mr. PATTERSON: It is right near the salt regions, and I pay more for salt there than I do out here.

Mr. BOYLE: Why is that?

Mr. PATTERSON: I do not know.

Mr. BOYLE: Then the plant operated say at Delray could get salt cheaper than you can at Hornell?

Mr. PATTERSON: Yes, they do.

Mr. BOYLE: Do you know anything about getting salt around Altoona?

Mr. PATTERSON: No, I never was down there. The only
158 thing I know, we pay four and a quarter for salt at Hornell.

Mr. BOYLE: You pay \$4.25, you say at Hornell?

Mr. PATTERSON: Four and a quarter at Hornell, yes.

Mr. BOYLE: What is the price at Chicago?

Mr. PATTERSON: I have seen bills at \$3.00.

Mr. VEEDER: That is per ton?

Mr. PATTERSON: Yes.

Mr. BOYLE: \$3.00?

Mr. PATTERSON: Yes, and I think an ice station out here operated
by a railroad company has a price of \$3.00. I assume that is under
a contract. The bills were sent to me in error, was the reason I
know it.

Mr. BOYLE: How much salt is used per ton for refrigeration pur-
poses?

Mr. PATTERSON: It will run 16 to 20 pounds.

Mr. BOYLE: 16 to 20 pounds to the ton of ice?

Mr. PATTERSON: Yes, sir—I mean 8 tp 10 per cent, is what I
should say; 160 to 200 pounds.

Mr. BOYLE: 1 to 10 per cent?

Mr. PATTERSON: Yes, 8 to 10 per cent, 160 to 200 pounds.

Mr. BOYLE: 160 to 200 pounds of salt to every ton of ice?

Mr. PATTERSON: Yes, sir.

159 Mr. BOYLE: Is it not a fact that throughout the section gen-
erally of New York and the New England states and north-
ern Ohio and in that general section that ice can be obtained cheaper
than in the west or in the south, in fact in almost any other section?

Mr. PATTERSON: Well, ice is probably as cheap right in Chicago
as any place in the United States.

Mr. BOYLE: That is in the same region.

Mr. PATTERSON: Yes.

Mr. BOYLE: I meant to include that region.

Mr. PATTERSON: Yes, it costs more to make ice in Omaha and in
Hornell than it does to make ice in Chicago. That is a coal con-
dition, that makes that.

Mr. BOYLE: How about the harvesting of ice in the sections around
New England and New York state, and in Michigan, we will say.

Mr. PATTERSON: I am not very close to that. I could not figure
that I could afford to have ice contracts without manufactured ice,
it is so uncertain. I am not much on the natural ice. I do not
know much about it.

Commissioner McCHORD: Do you manufacture it here?

160 Mr. PATTERSON: Yes, sir, we manufacture it here. We
have two plants here.

Commissioner McCHORD: Can you sell your manufactured
ice as cheap as the natural ice?

Mr. PATTERSON: Well, it is getting so that the public demands
manufactured ice, and you can get a little bit more for it on account
of the purity.

Mr. BOYLE: It is a fact, is it not, that almost all of the salt is

produced around the Syracuse district in New York, and in Michigan also; most of the salt comes from either of those sections.

Mr. PATTERSON: Most of this icing salt, I think, comes from around Buffalo and Hornell, around in there.

Mr. BOYLE: What is that, the Retsof?

Mr. PATTERSON: That is the Retsof, yes. Then there are some mines at Detroit, right at Detroit.

Mr. BOYLE: There is a mine right at Detroit?

Mr. PATTERSON: Yes.

Mr. BOYLE: Do you know who operates the icing station there?

Mr. PATTERSON: No, I do not. I have kind of got away from that, of late years.

Mr. BOYLE: Do you know of any icing stations west of the Missouri River operated by any of the packing companies?

Mr. PATTERSON: No, I do not.

Mr. BOYLE: Do you know any west of the Mississippi River?

Mr. PATTERSON: No, I do not know of any. There is one at Rock Island; I think that is a local contractor.

Mr. BOYLE: I have nothing further to ask of Mr. Patterson.

Mr. VEEDER: Just one question. Is it not a fact that the cost of refrigerating cars with ice will vary at different places very largely, according to local conditions?

Mr. PATTERSON: Local conditions have a good deal to do with it. The price of manufactured ice is a question of coal and water, and the natural ice of weather conditions, although I am not very much up on the natural ice question and do not know much about it.

(Witness excused.)

Mr. BOYLE: If your Honor please, apropos of the question of the condition of equipment, and I think related to the subject of return upon investment, and what value should be attached to equipment, I think it would be well to have one or two witnesses give us their experience, and to that end there are one or two witnesses here engaged in the fruit business, who are large users of refrigerator cars and I understand can enlighten us as to the character of equipment in which their shipments move.

Before they are introduced, I should like to offer in evidence for the record in this case an affidavit from Mr. G. R. Williams, Traffic Manager of Chase & Company, fruit shippers in Jacksonville, Fla. It might be well to state that Chase & Company have repeatedly written the Commission, and they were advised of this hearing; but inasmuch as we have several complaints from the Florida section, we concluded that it might be necessary to hold a hearing there.

To establish, however, the fact that there are complaints as to the service rendered, by reason of the use of certain private cars, I offer this affidavit of Mr. Williams, the Traffic Manager of Chase & Company, and will undertake at any time upon reasonable notice, to try to get Mr. Williams here personally. We will have Mr. Williams on the stand some time before this hearing is concluded. I should like that affidavit made part of the record. It complains of the character of equipment and of the refrigeration.

Commissioner McCracken: You can offer that.

143 Mr. Norris: I do that, if your Honor please, for the purpose of showing that not only my complaint is made against these conditions, but that complaint actually is made against it, and in further evidence of that fact, I think Mr. Milver has something to say about one or two witnesses that he represents.

(The affidavit is as follows:)

State of Florida,
County of Duval, ss:

Before me appears G. R. Williams, who being duly sworn, deposes and says that:

I am Traffic Manager of Chase & Company, Jacksonville, Fla., and have been serving them in this capacity for the past four years or more. My duties consist principally of the handling of all matters pertaining to the transportation of all shipments made by the Company.

While serving in this capacity I have had occasion to notice various irregularities on the part of the carriers in the handling of our shipments when moving under refrigeration. These irregularities I desire to call to the attention of the Interstate Commerce Commission in the hope that something can be done to improve the now existing conditions.

Every season we have shipments of celery, lettuce, and other vegetables, moving under refrigeration, arrive various dates. 144 such as in bad condition. When we discover evidence of improper handling, claims are filed with the initial loss and other interested carriers. Our claims are generally declined by these various carriers with the statement that investigation has developed that "our was properly lost at all icing stations and that at no time were the baskets less than two-thirds (2/3) full of ice." We have, time and time again, demanded of the Railroads a detailed icing record but they advised that the information is not given to them by the Terminal Car Lines and that they cannot, therefore, give it to us. We have called their attention to the fact that if the icing record, is perfect as claimed by them, that they should have no objection to furnishing us with a detailed report. This argument however seems to have no effect as the carriers stand by their statement that they are unable to secure the information from the Terminal offices of the Terminal Car Lines or Fruit Growers Express.

It is the writer's opinion that the bad condition on arrival at destination of such a large number of cars moving under refrigeration is caused to a large extent by the poor equipment that we are compelled to load.

145 I have recently made trips to the Railroad Yards in Jacksonville for the purpose of inspecting cars of celery and lettuce loaded in Fruit Growers Express equipment and moving under refrigeration. I have found from personal observation that the cars are old and worn out and that there is ample opportunity for im-

proper refrigeration. The men have been in service as long that the sunlight and other ill-influencing materials which they have used have been in service as long that they are rotten. These men have been required the most closely and carefully for these months and with the institution has not. Where there has been any attempt to do these the institution it has not been properly done. Operating these men as refrigerators is a good but the refrigerating is done not in house during more months with all the heat and moisture now. The fact that we have no money commodities shipped to women (F. G. E.) our living cold weather, these facts become an added destination to the last kind of evidence that the institution is very poor and that cold gets in from the outside just as it gets in from the inside.

We are now compelled to find a good deal of our food and our outfit in fresh frozen because our old outfit from 1900 to 1901 20,000. I have been authoritatively advised that these men have been in service a number of years all over the country and were run out of California as a group of the fact that they did not offer proper refrigeration. I would like to have the Commission decide how long these men of our have been in up to the present time, and if they are still suitable to be used for of possible commodities.

(Signed)

C. E. WILSON.

Subscribed and sworn to before me, a Notary Public, for the Territory of Hawaii, this 10th day of January, 1912, A. D.

(Witness.)

WILSON HARRIS S. KIDDER.

My commission expires Sept. 2, 1912.

Mr. HARRIS: Mr. Commissioner, with your permission, we should like to produce some testimony from an expert of the Territory's Fruit Distribution Company, who are now here and of refrigerated equipment. And while these questions must be put over until I think that testimony is necessary to the case in illustrating the character of equipment that the case of refrigeration are are compelled to agree to the request to do so. I have two witnesses.

107 C. A. CHAPMAN was called as a witness and having been duly sworn, testified as follows:

Mr. HARRIS: You are connected with the Atlantic Fruit Distribution Company?

Mr. CHAPMAN: The Atlantic Fruit Distribution are here office in New York.

Mr. HARRIS: Mr. Chapman, will you please state your experience in the matter of shipping fruit and especially citrus to refrigerated cars; what has been your experience?

Mr. CHAPMAN: For 12 years I am connected with the California Fruit Growers Exchange of Los Angeles, where we grow and ship fruit. I was their general sales manager, with headquarters in Chicago.

in charge of sales. A year and a half ago I became connected with the Atlantic Fruit Distributors, who import bananas and sell them throughout the United States and Canada.

Mr. HILLYER: To what extent is your company a user of refrigerating equipment?

Mr. CHARTER: We ship from Seaboard points inland approximately nine million stems of bananas a year, and it is all shipped in refrigerated equipment.

Mr. HILLYER: You have had some difficulty with the 168 character of equipment that has been supplied you upon reasonable request of the originating carriers, and will you please indicate at what point that took place.

Mr. CHARTER: We are using the ports of New York, Philadelphia, Baltimore and New Orleans. At New Orleans we are using as the initial line the New Orleans & Northeastern Railroad. Their terminal is at the dock where we discharge our cargoes. The equipment that is being furnished us and has been furnished us for the past two years has been the T. R. E. refrigerated cars. These cars are very old and dilapidated, and we have constantly protested for the past year and a half against this equipment, for the reason that, particularly during the cold weather, we meet with heavy losses on account of the cars not being intact and the fruit arriving at destination chilled and frozen. We protested to the New Orleans & Northeastern Railroad against this equipment, and their reply was that they could not do any different, as they were forced to draw their refrigerated equipment from the M. & O. Railroad, a connecting line, and that they were under contract with Armour & Company and could give us no other service excepting the T. R. E. equipment. We protested to the Commission, and following this

169 we received a letter from our manager in New Orleans, stating that the Armour Car Lines had sent some 200 men to repair this T. R. E. equipment at New Orleans. These repairs, however, were of very little consequence, because the equipment was so old and worn out that after they became in movement again they became racked, and with the same result as we had previously, frosted fruit at destination. This not only worked a hardship so far as the loss is concerned after the fruit arrives in the market by the fact that the fruit is sold for a great deal less than it would otherwise sell at, but in addition to this the fact that our largest competitor, who is the United Fruit Company, have better equipment, being able to use the Illinois Central cars as well as some of their own which they have under lease, places us at a disadvantage with the trade throughout the United States. Our own customers and also those that purchase from others, claim that our fruit during the summer season is all right, but "we cannot afford to purchase from you during the winter season on account of the fact that you are forced to use the T. R. E. equipment, consequently we lose both ways, loss of business and loss of results on the fruit that we do ship."

170 Mr. HILLYER: You suffer some damage to the shipments, do you not?

Mr. CHARTER: Considerable, and we have filed claims with the New Orleans & Northeastern Railroad, with no result.

Mr. HILLYER: Do you know how old some of those claims are that the carriers still have under consideration?

Mr. CHARTER: Many of them over one year and possibly extend to a period of two years.

Mr. HILLYER: Due wholly to the failure of the carriers to furnish the facilities for transportation that Section 1 of the Act requires them to furnish.

Mr. CHARTER: Correct.

Mr. HILLYER: You pay just the same freight rates, do you not, that others pay who get better equipment?

Mr. CHARTER: Absolutely, for better equipment. We also received a letter from the N. O. & N. E., the purport of which was that the equipment we have been receiving from them was the best they could give us and if the service was not satisfactory, we could take our business elsewhere. Unfortunately we could not avail ourselves of that service because of the fact that there are no other facilities at New Orleans which would be suitable to discharge

171 our cargoes excepting that which is afforded to the United Fruit Company, our competitor. The docks at that point are at the terminal of the I. C. Railroad and the docks are controlled by the New Orleans Dock Commission. We appealed to them, and they told us it was impossible for them to give us those facilities, so we are forced to remain where we are and accept the equipment we are now getting, with great loss.

Mr. HILLYER: In your attempt to get a fair share of the facilities at New Orleans you discovered that your chief competitor had pre-empted everything in sight.

Mr. CHARTER: Quite correct.

Mr. HILLYER: You are therefore compelled to take the equipment furnished by the N. O. & N. E. and they in turn throw you back on this inferior equipment?

Mr. CHARTER: Yes.

Mr. HILLYER: And is it not a reasonable conclusion, Mr. Charter, that if you are paying the freight rates which these carriers publish for the transportation of fruit from New Orleans to points in this territory, which rates are the same that your chief competition pays, for good service, that either they are paying too little or you are paying too much.

172 Mr. CHARTER: I think that is a proper position for us to take, and I think it is quite correct.

Mr. HILLYER: That your rates for the service you receive are unjust and unreasonable and in violation of law.

Mr. CHARTER: Undoubtedly.

Mr. HILLYER: There is involved also the question of unjust discrimination and undue prejudice that this heavy user of this equipment is subject to. Do you know anything about the experience of other independent shippers at New Orleans.

Mr. CHARTER: They are all practically in the same position as we are; all independent shippers are forced to use this same equip-

ment, and many of them have complained, and I know in particular of Carroll Brothers. I saw one of the letters in which they had complained to the railroad; and I think several others, but I cannot recall their names.

Mr. HILLYER: Mr. Charter, as to the details of what your complaint involves, you are prepared to furnish them, as I understand it, within a few hours. Mr. Charter received word yesterday that he would be given an opportunity to be heard at this hearing, and he at once sent for the file of complaints with regard to this specific equipment, and he is advised that that file will be here by 173 tomorrow morning or in time to be put into this record tomorrow. There has been some attempt made in New Orleans, has there not, to make it appear as though the United Fruit Company would have to take some of the same service that you take?

Mr. CHARTER: About the time or immediately following the complaint that we made, the United Fruit Company would occasionally bring over a ship and discharge at the same dock where we are discharging; but that is very irregular, and in no large quantity. They, however, having leased cars, can place their own equipment, and they are not placed at the same disadvantage as we would be; not having any leased cars, we are forced to use the others.

Mr. HILLYER: The condition in which you find yourselves there as to facilities and the unequal distribution of the facilities and the resulting undue prejudice to you in violation of law is somewhat akin to the old story of the distribution of car equipment in the coal mines, and the same remedy can be meted out in this case that was given in that, namely, that if the facilities are not adequate to serve all parties that apply equally, they should be so divided that those who do apply should get their fair share without *unjur* 174 discrimination. Do you think of anything further you would like to say at this time.

Mr. CHARTER: I believe not. I believe I have covered everything.

Mr. HILLYER: Whose cars are you using at the North Atlantic and other ports?

Mr. CHARTER: Principally cars that are owned by the railroads the initial line at the port of entry, like the Pennsylvania or the Delaware, Lackawanna & Western or the Baltimore & Ohio.

Mr. HILLYER: You have no complaint to make of them.

Mr. CHARTER: No, we receive much better equipment at those ports.

Mr. HILLYER: This equipment that you receive and complain of is supposed to be furnished to the carriers under contract by the Armour Car Lines, is it not?

Mr. CHARTER: That is correct.

Mr. HILLYER: Our case is not against the Armour Car Lines.

Mr. CHARTER: It is against the New Orleans & Northeastern Railroad, but their excuse for not furnishing better equipment is the fact that they draw their supply from the Mobile & Ohio, who are under contract with the Armour Car Lines for the T. R. E. equipment.

175 Mr. WALTER: How many cars are nine million stems?

Mr. CHARTER: An average would be probably 450 stems to the car, according to the size and grade.

Mr. HILLYER: Out of New Orleans Mr. Charter ships some 50 or 65 cars per week, two or three cargoes of fruit. In addition to bananas you handle other fruit, do you not?

Mr. CHARTER: All tropical fruits.

Mr. HILLYER: You have had experience in the transportation of citrus fruits?

Mr. CHARTER: To some extent.

Mr. BOYLE: Do you receive fruits through any other southern port than New Orleans?

Mr. CHARTER: No, sir. We did at one time at Galveston.

Mr. BOYLE: What kind of equipment did you get down there?

Mr. CHARTER: We got better equipment and better service.

Mr. BOYLE: What sort of a car did you use?

Mr. CHARTER: We used the P. F. E. principally, I think, and some F. G. E. cars.

Mr. BOYLE: How long ago was that?

Mr. CHARTER: Two years ago, or two and a half years ago.

Mr. BOYLE: You had no trouble with that equipment?

Mr. CHARTER: We had none, no sir.

176 Mr. BOYLE: Do you know whether the United Fruit Company use many of these F. G. E. cars now?

Mr. CHARTER: They do not, that is, at New Orleans they do not use any.

Mr. BOYLE: Do they use some out of Mobile?

Mr. CHARTER: They may use some out of Mobile. That I do not know. They did use considerable F. G. E. cars out of Mobile at one time. I do not know whether they are using them now or not.

Mr. BOYLE: Do you know from whom they obtain their present equipment?

Mr. CHARTER: Do you mean as to Mobile or New Orleans?

Mr. BOYLE: Take either one.

Mr. CHARTER: At New Orleans I understand that they have leased some U. R. T. cars, and then they used the Illinois Central, I think it is called Central Fruit Despatch, or some such name.

Mr. BOYLE: The U. R. T. is the Union Refrigerator Transit?

Mr. CHARTER: Union Refrigerator Transit.

Mr. BOYLE: Of Milwaukee, I believe.

Mr. CHARTER: I do not know where their headquarters are.

Mr. BOYLE: And the cars at Mobile?

177 Mr. CHARTER: That I am not familiar with.

Mr. BOYLE: I have nothing further.

(Witness excused.)

MARK T. ADAMSON was called as a witness, and having been duly sworn, testified as follows:

Mr. HILLYER: Please state your present position?

Mr. ADAMSON: Resident manager of the Atlantic Fruit Distributors in Chicago.

Mr. HILLYER: Your field of operation is in the City of Chicago?

Mr. ADAMSON: Yes.

Mr. HILLYER: What was your experience previous to your employment here?

Mr. ADAMSON: I had about six years' experience in railroad refrigerator work just prior to that, and previous to that in the fruit business in California.

Mr. HILLYER: Describe what your duties were, briefly, when you were in the railroad service.

Mr. ADAMSON: It covered all kinds of inspection work, icing inspection, loading of cars and tracing empty cars.

Mr. HILLYER: In the course of business that you are now engaged in, do you have occasion to see the character of equipment that the fruit is delivered in, in Chicago?

Mr. ADAMSON: Yes, I see nearly all our cars that come to Chicago and am very often called out of town to see the deliveries at outside points that I sell.

Mr. HILLYER: What cars are you supplied with for the movement of bananas to Chicago; What are the initials?

Mr. ADAMSON: Almost entirely T. R. E.'s.

Mr. HILLYER: What do you know about these T. R. E.'s generally?

Mr. ADAMSON: Well, they are generally very poor cars. That is, whether the construction was not good originally or whether they have been in service so long that they have outlived their usefulness, I do not know; but they have become racked in almost every part, along the sides, and especially in the flooring, in the bottom of the cars. I have frequently seen T. R. E. cars with the sidings loosened to the extent that you could put your hand up in between the outside siding and the interior of the car and could have pulled the boards off the side. I have also found a great many with openings at the ends which were originally left for deadwood bolts.

179 There have been a sort of protection at the ends, but these were generally broken out, allowing the air to enter between the outside and inside floors, and the only protection afforded to the commodity loaded was the light inside flooring.

Mr. HILLYER: Has there been any comparison made between the condition of shipments delivered in T. R. E. cars and shipments delivered in other cars?

Mr. ADAMSON: Invariably you will find that deliveries in cars other than T. R. E.'s, if the weather is at all severe will be, if damaged at all, very slightly; and T. R. E.'s loaded out of the same boat and moving in the same train will be severely frozen.

Mr. HILLYER: Speaking about the banana transportation particularly, are they apt to be damaged by severe weather? How does the cold get to them?

Mr. ADAMSON: My experience has been that our fruit is always chilled on the bottom; it is the lower hands, the lower parts of the fruit in the bottom tier of the car that is damaged, which would

go to show that the cold air must come through the bottom of the car. Also along the sides of the car I have found top bunches in the top of the load along the side of the car chilled while the
180 fruit over in the center of the car would be all right.

Mr. HILLYER: What simple device is necessary to protect this fruit in cars of this kind?

Mr. ADAMSON: Simple device?

Mr. HILLYER: Yes, how do they construct the car to keep the cold from coming through the floor?

Mr. ADAMSON: They just need good lumber and a little insulation.

Mr. HILLYER: A little insulation?

Mr. ADAMSON: Yes.

Mr. HILLYER: About how much insulation?

Mr. ADAMSON: Well, they ought to have at least two layers.

Mr. HILLYER: Cars that are constructed nowadays usually have three layers, do they not?

Mr. ADAMSON: Yes.

Mr. HILLYER: You have never investigated any of these cars to see whether they have any or not, have you?

Mr. ADAMSON: I have seen parts of the floors that have been broken, and I have seen a little hair, I guess it is, that was probably intended for insulation.

Mr. HILLYER: I am not familiar with just what papers we should file in this case with the Commission, but is there not a comparison there of actual shipments in various kinds of equip-
181 ment?

Mr. ADAMSON: Yes, we have affidavits and comparative reports of T. R. E.'s and other cars moving out of the same cargoes and to the same destinations. We have affidavits coming from New York covering those shipments.

Mr. HILLYER: Mr. Commissioner, we shall ask leave to put them in as soon as they arrive. We think that character of evidence will be conclusive of this point that we are advancing here in this case. We are contending broadly for service under Section 1, which defines transportation, and that is what we claim we are not getting from these carriers, although we are paying them for it. Of course, we understand that in order to compel the carriers to render this service in connection with Section 1, it is necessary to go into a court and get a writ of mandamus, as was done in a coal case in Kentucky. But we feel that a finding of the Commission in this case on the evidence we submit as to the failure of the carrier to obey the law will go a long way in helping us to get the relief that we are seeking. And that is in addition to the direct violation of the law in charging us excessive rates for poor service and
182 charging us unjust and discriminatory rates and unduly prejudicial rates when compared with the services that are rendered on the same rates to our competitor, namely, the United Fruit Company.

Commissioner McCHORD: You may offer those papers when you get them in the morning.

Mr. HILLYER: Mr. Adamson, what experience do you have in Chicago here with the trade in trying to sell fruit in competition with the United Fruit Company, when our fruit is brought to the market in imperfect equipment and they bring it here in good equipment?

Mr. ADAMSON: I visited with practically all of the trade in Chicago, and I have been told frequently that they like our fruit and would like to do business with us, but that they are afraid, especially during the winter; that our stuff is all right during the spring and fall, but they say that in the summer it does not come in as good as theirs, and in the winter it is always chilled, when we get good stuff, and that is the reason they give for not doing business with us.

Mr. HILLYER: There is absolutely no way of figuring the amount of damage that we suffer in this respect, is there?

183 Mr. ADAMSON: Absolutely none.

Mr. HILLYER: But it amounts to considerable and a material amount.

Mr. ADAMSON: We might double or treble our business if we had the facilities our competitors have.

Mr. HILLYER: It all traces back to the inferior equipment forced on the shippers by this car line company. Have you filed any claims for damages with these railroads which have occurred, due to the poor equipment?

Mr. ADAMSON: Yes, a great many of them.

Mr. HILLYER: What luck do you have with them?

Mr. ADAMSON: We have never heard anything from them yet.

Mr. HILLYER: Some of these claims are a year or more old, are they not?

Mr. ADAMSON: There are a great many that I know of that are over a year old.

Mr. HILLYER: Due to the manner in which this business is transacted; that hurts you with your customers, does it not?

Mr. ADAMSON: Yes, sir.

Mr. HILLYER: Because in some cases they are the sufferers.

Mr. ADAMSON: Banana sales are made f. o. b. seaboard, and our plan is to insist on the payment of the invoice in full, and
184 we handle claims for the consignees' accounts. But we made that go for a little while, but we cannot any more, because our trade here have got, some of them must have from 50 to 100 claims, and they say they cannot afford to finance the railroad and carry along their business and wait for the railroads to pay their claims, for they pay for good stuff when they do not get it.

Mr. HILLYER: When these complaints were filed with the Interstate Commerce Commission and the matter was started, it is our understanding that quite a large number of workmen were sent down there by the Armour Car Lines people to try to patch up this equipment.

Mr. ADAMSON: Yes.

Mr. HILLYER: How many men were sent down there?

Mr. ADAMSON: I understand there were about 200 men.

Mr. HILLYER: What was the effect of that, in giving us relief?

Mr. ADAMSON: Well, they tried to repair these defects, but they could never be repaired. The cars would have to be rebuilt. I know I have seen a great many cars that had the floor rotted out, part of the boards gone, especially around the ends of the cars under the ice bunkers, and they were repaired by simply nailing a
185 board across the opening, just simply patching it, and there was no further insulation or anything put in there. If there had been any in originally, it had become exposed and partly torn out.

Mr. HILLYER: That sort of repairing did not last from New Orleans to Chicago very often, did it?

Mr. ADAMSON: No, you would get here and half the time you could lift those boards off with your hands.

Mr. HILLYER: Do you think of anything else you would like to state here?

Mr. ADAMSON: I think that covers everything pretty fully.

Mr. BOYLE: What do you mean by the racking of cars?

Mr. ADAMSON: Racking?

Mr. BOYLE: Yes.

Mr. ADAMSON: Just how did I use it?

Mr. BOYLE: You used the expression that the cars were racked.

Mr. ADAMSON: Well, probably if I had said loose it would have been better.

Mr. BOYLE: That was the sense in which I thought you used it, but I just wanted the record to be clear as to what you meant by racked.

Mr. ADAMSON: Yes.

186 Mr. BOYLE: What do you mean by the flooring being loose?

Mr. ADAMSON: Well, the sides being loose from the bottom and the bottom boards, instead of being matched and tight together are not, they are very loose, both in relation to each other and to the floor; they wobble up and down and crossways.

Mr. BOYLE: Mr. Adamson, the cars which you refer to as having been racked and having had spaces between the sides and flooring, in which you might thrust your hand, were not shop carded?

Mr. ADAMSON: No.

Mr. BOYLE: But were in regular service?

Mr. ADAMSON: They were in regular service, and those cars are in service right along. As soon as they are made empty here they are pulled out. I am on the track a great deal and notice particularly whether those cars are carded for repairs or not, and I have noticed that those cars have not been.

Mr. BOYLE: With what other did you say you had worked?

Mr. ADAMSON: The Pacific Fruit Express Company and the refrigerator department of the Rock Island Railroad and the California Citrus Union in California, Los Angeles.

187 Mr. BOYLE: You did not work for the A. R. T. Company?

Mr. ADAMSON: Yes, I worked for the A. R. T. Company for about a month only.

Mr. BOYLE: What were your duties with the A. R. T. Company?

Mr. ADAMSON: I was loading potatoes in Texas.

Mr. BOYLE: And with the Pacific Fruit Express?

Mr. ADAMSON: That was principally looking after ice, inspecting ice stations and looking after the movement of cars.

Mr. BOYLE: What do you mean by looking after the movement of cars?

Mr. ADAMSON: Checking up the railroads, as to delays.

Mr. BOYLE: What icing stations did you inspect at that time?

Mr. ADAMSON: Principally only east of Chicago, and I should say I inspected all of the stations east of Chicago on all roads.

Mr. BOYLE: On all roads?

Mr. ADAMSON: Yes.

Mr. BOYLE: Only in so far as they performed the service for shipments moving in the equipment of your company?

188 Mr. ADAMSON: That is all, to see whether we were getting service.

Mr. WALTER: Did you find that the checking up of these cars assisted in expediting their movement?

Mr. ADAMSON: Checking up of P. F. E. cars, you mean?

Mr. WALTER: Yes.

Mr. ADAMSON: I think it di-, yes.

Mr. WALTER: That is the usual and customary service for such lines, is it not?

Mr. ADAMSON: Yes, there are a great many railroads that if you do not call their attention to delays, the people who would remedy it do not know of it.

Mr. WALTER: And in that way you get a greater service out of a single car than might otherwise be possible?

Mr. ADAMSON: Yes.

Mr. WALTER: You took the same course both with loaded and empty?

Mr. ADAMSON: No, it is not necessary to trace loaded cars, because they are always loaded with highly perishable commodities.

Mr. WALTER: And this was empty car checking which you were doing?

189 Mr. ADAMSON: Almost wholly. The railroads very often——

Mr. WALTER: Now have you brought suit in any court and established these facts which you have told us about here this afternoon?

Mr. HILLYER: I object to that line of cross examination, if the Commission please.

Mr. WALTER: I have no desire to press it. I just wanted to know whether with all these grievances they had got any money out of the railroads for damages.

Commissioner McCHORD: He thinks he has come to the right tribunal now, I understand.

Mr. HILLYER: I think it is immaterial.

Mr. WALTER: He has had two years without getting any of his claims paid, he says.

Commissioner McCHORD: I think it is all right to ask that question.

Mr. ADAMSON: What was the question?

(The question was repeated as above recorded.)

Mr. ADAMSON: I do not handle the claims myself. They are handled by the traffic manager in the New York office.

Mr. WALTER: That was not the question I asked. I asked you if you had not brought suit in any court and established the
190 facts which you have told us about here this afternoon.

Mr. ADAMSON: I have not gone to court myself.

Mr. WALTER: Has your company?

Mr. ADAMSON: I cannot tell you on that.

Mr. WALTER: That is all.

Mr. BOYLE: It is your opinion in order to get empties returned with great despatch that they should be checked, as I understand you?

Mr. ADAMSON: I think so, yes.

Mr. BOYLE: In your position with both the A. R. T. and the P. F. E., you traveled on a pass, did you not?

Mr. ADAMSON: Yes.

Mr. BOYLE: And in inspecting and checking cars you used that pass in going from place to place?

Mr. ADAMSON: Yes.

Commissioner McCHORD: Who does that?

Mr. BOYLE: That was when he was with the Pacific Fruit Express, which is a Southern Pacific line, and the A. R. T., which is the Gould Line. What do you think is the fate of the smaller owner who has neither a pass to travel on nor force to check up these cars? Would it not be probable—

Commissioner McCHORD: Is he at a disadvantage?

191 Mr. ADAMSON: I should say that he would be at a slight disadvantage, yes. Of course, if he has not a very large number of cars he would not have the same amount of delay that large owners have.

Mr. BOYLE: Would it not be probable that his car might lay out on a side track empty for a greater period than it would if he had someone who could be there to check it up and get behind the railroad about it.

Mr. ADAMSON: It probably would.

Mr. BOYLE: So that his car on the whole would not make as much mileage as the car of the concern that was able to do this checking.

Mr. ADAMSON: Well, he would probably be tracing it by mail, the same as I know the Pacific Fruit Express Company used to do, as well as have a traveling salesman to do it.

Mr. BOYLE: Is that nearly so effective?

Mr. ADAMSON: It probably is not quite as effective as having someone to check them up.

Mr. BOYLE: When you checked, did you not frequently report back by wire?

Mr. ADAMSON: Yes.

192 Mr. BOYLE: Did you have a frank over the line of the telegraph company?

Mr. ADAMSON: Yes.

Mr. BOYLE: That would be considerably more expeditious than a postal card, would it not?

Mr. ADAMSON: I think so.

Mr. BOYLE: The cars of the so called railroad owned car lines that were shown in this proceeding, so far, according to the Commission's exhibit, to have materially lower percentage of empty mileage than others, is it or is it not a fact that a car of the Pacific Fruit Express or some other railroad line, and we will take the Pacific Fruit Express because you are more familiar with that, might come into the east with a shipment via the Baltimore & Ohio, and instead of having to return by the Baltimore & Ohio, could be passed over to the Pennsylvania Railroad for loading and come back that way with a load, and that that frequently happens, or that it might be loaded back by the B. & O., of course, but I mean assuming there was no return load for it, it might be passed over to another line for load.

Mr. ADAMSON: I believe so, if the other line was short of cars.

193 Mr. BOYLE: That happened while you were connected with the company, did it not?

Mr. ANDERSON: Yes, I know of cases where that has happened.

Mr. BOYLE: That is all.

Mr. WALTER: I understand that a B. & O. car—

Mr. BOYLE: Not a B. & O. car, a P. F. E. car

Mr. WALTER: A P. F. E. car, where you were checking up on these refrigerator cars, you would find a number together of various ownerships?

Mr. ADAMSON: Yes, sir.

Mr. WALTER: Now, on checking them up would they switch out your cars, or did they all go along together?

Mr. ADAMSON: No, I was never very successful in getting them to switch out P. F. E. cars and move them for me.

Mr. WALTER: So that in expediting your own shipments, you expedited all others that were along with them?

Mr. ADAMSON: Yes, sir.

Mr. WALTER: So if there was any small man that had only a few cars, he got the result of this checking up?

Mr. ADAMSON: If he was in the middle, they did not switch a string of cars and leave him there, no.

194 Mr. WALTER: That is all.

Mr. BOYLE: That is, assuming, of course, that he was in the middle.

Mr. ADAMSON: If he was on the end, they would have to make the switch just the same.

Mr. BOYLE: He might be on another siding, for instance?

Mr. ADAMSON: Then he would not be in a string of cars, he would be off by himself.

Mr. WALTER: He might be on another division.

Mr. BOYLE: That is all.

Commissioner McCHORD: We will take a recess until seven thirty o'clock.

Whereupon at 3:45 P. M. a recess was taken until 7:30 P. M.

195

Evening Session—7.30 P. M.

Appearances:

C. C. Severance and S. W. Burr, (St. Paul, Minnesota), and A. R. Urien and C. J. Faulkner, Jr., (Chicago, Illinois).

Special Appearances:

C. A. Severance, S. W. Burr, A. R. Urien and C. J. Faulkner, Jr., especially appearing for Armour Car Lines and Armour & Company, for the purpose only of objecting to the jurisdiction.

Mr. BOYLE: Mr. Ellis.

FREDERICK W. ELLIS was called as a witness, and having been duly sworn, testified as follows:

Mr. SEVERANCE: If your Honor please, Mr. W. W. Burr, and myself appear for Mr. Ellis, and Mr. Urien and Mr. C. J. Faulkner, Jr., will also appear for Mr. Ellis. We also desire at this time to enter a special appearance for Armour Car Lines for the purpose only of objecting to the jurisdiction.

Mr. BOYLE: Is there any appearance for Armour & Company? They are parties to this proceeding.

Mr. SEVERANCE: I do not know anything about that.

Mr. BURR: You might enter a special appearance.

Mr. SEVERANCE: Very well, we will enter the same special appearance for Armour & Company, for the purpose only of objecting to the jurisdiction of the Commission over it.

Mr. BOYLE: What is your full name?

Mr. ELLIS: Frederick W. Ellis.

Mr. BOYLE: What is your position with Armour Car Lines?

Mr. ELLIS: Vice-President of the Armour Car Lines.

Mr. BOYLE: What is your position with Armour & Company?

Mr. ELLIS: I have none.

Mr. BOYLE: What is your connection with Armour & Company other than through the Car Lines?

Mr. ELLIS: I have not any connection with Armour & Company.

Mr. BOYLE: How long have you occupied the position of Vice-President to the Armour Car Lines, Mr. Ellis?

Mr. ELLIS: Since 1904.

Mr. BOYLE: Prior to that time what was your position and with whom?

Mr. ELLIS: Since 1901 and until 1904 assistant general manager and general manager of the Armour Car Lines?

Mr. BOYLE: Prior to 1901?

Mr. ELLIS: With the Armour Car Lines, from November, 1900 until March, 1901, as assistant general manager; and prior to that

197

and as vice-president and general manager of The Kansas City Fruit Express and Kansas City Dressed Meat Line and vice-manager of Armour & Company for some years.

Mr. BROWN: Mr. Ellis, I have before me the report made by Armour Car Lines to the Interstate Commerce Commission some time last spring, and it shows that 7,500 shares, out of a total of 7,500 shares of the stock of the Armour Car Lines is held by J. Ogden Armour. That is correct?

Mr. FARR: Yes.

Mr. BROWN: And that 300 shares are held by G. B. Robinson; that is correct?

Mr. FARR: I believe so.

Mr. BROWN: That 70 shares are held by F. W. Ellis. That is also correct?

Mr. FARR: Yes.

Mr. BROWN: Then there are remaining shares which I presume are held for qualifying shares.

Commissioner McFARLANE: Is that a report made in the 1906 investigation?

Mr. BROWN: Yes, sir. Who is Mr. G. B. Robinson?

Mr. FARR: President of Armour Car Lines.

Mr. BROWN: What position does he hold with Armour & Company?

Mr. SUMNER: Now I desire at this time to enter an objection to this question, and I shall object to any similar questions on the ground that the question relates to the private business and affairs of Armour Car Lines; that, neither under the act of Congress nor under the action which have been entered in this proceeding, has this Commission any jurisdiction, right or authority to require into such matters or to demand the information which the question calls for, and with all due respect to the Commission, we are constrained to advise the witness that he is not required to and ought not to answer the question.

I want to make that objection and make it in a timely way so that counsel may be advised of our position, and I so advise Mr. Ellis.

Commissioner McFARLANE: The objection will be overruled and the witness will be required to answer.

Mr. SUMNER: But the witness will, if he takes advice 1907 of his counsel, still decline to answer.

Mr. FARR: I must decline to answer on advice of counsel.

Mr. BROWN: What position does Mr. J. Ogden Armour hold with Armour & Company?

Mr. SUMNER: I make the same objection on the same ground and advise the witness in the same way.

Commissioner McFARLANE: The witness will answer the question.

Mr. FARR: I refuse to answer on advice of counsel.

Mr. BROWN: Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relation with or to Armour & Company?

Q: Nevertheless, I make the same objection and give the same answer to the others.

Commentator McNamee: Answer the question.

Q: Does it follow in the case of objects?

Q: Does it follow that since the others do have the same kind of evidence, the proposition is true?

Q: Does it follow (19)? Does it?

Q: Does it follow that since the others do have the same kind of evidence, the proposition is true?

Q: Nevertheless, that is not true.

Q: Does it follow that since the others do have the same kind of evidence, the proposition is true?

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Commentator McNamee: Answer the question.

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Mr. BOYLE: How many are engaged in the carriage of fresh meats and packing house products?

Mr. ELLIS: All of the balance with the exception of some 270 tank cars.

Mr. BOYLE: Well, eliminate the tanks, I mean you- refrigerators.

Mr. ELLIS: Well, all of the balance, which would be about 8,000 cars, a little over 8,000 cars.

Mr. BOYLE: Between what points do most of those 8,000 cars ordinarily move.

Mr. ELLIS: I believe maybe most move between—I would like to change that answer. They are engaged in the main in handling the products of the packing houses located on the Missouri River and Chicago, to all points in the country, but especially to the Atlantic Seaboard and the east.

Mr. BOYLE: From what packing houses do they chiefly receive their loads?

Mr. ELLIS: Chicago, Kansas City, Omaha, Sioux City, East St. Louis, Fort Worth and Denver.

Mr. BOYLE: From what packing house in Chicago do they receive their principal load?

Mr. ELLIS: Armour & Company use more of them here than any one else.

203 Mr. BOYLE: What other packing company uses any appreciable quantity?

Mr. ELLIS: We loan them to the various packer-; Morris & Company, for example, use quite a number of them.

Mr. BOYLE: What percentage of your equipment out of Chicago is used by Morris & Company during the period of a year?

Mr. ELLIS: I have never figured it out on a percentage basis.

Mr. BOYLE: Would it be five per cent?

Mr. ELLIS: I would hardly say so.

Mr. BOYLE: Would it be two per cent.

Mr. ELLIS: Well, it would be less than five.

Mr. BOYLE: Would it be two per cent?

Mr. ELLIS: I could not say.

Mr. BOYLE: Would it be one per cent?

Mr. ELLIS: It would be simply a guess for me to say anything further on that. I am specifying that it is less than five, and it amounts to several hundred cars per annum.

Mr. BOYLE: Making one trip or more than one trip?

Mr. ELLIS: Just single trips.

Mr. BOYLE: From what packing house in Kansas City do the refrigerator cars, meat cars, of Armour Car Lines, receive their chief loading?

Mr. ELLIS: Armour & Company, Fowler Packing Company, and they are loaned there to the different packers from time to time.

Mr. BOYLE: What proportion of your cars out of Kansas City are used by the Fowler Packing Company?

Mr. ELLIS: I should say approximately 25 per cent.

Mr. BOYLE: Who are the officers of the Fowler Packing Company?

Mr. SEVERANCE: I object to that on the same ground—

Mr. BOYLE: Well, Poor's manual will show that.

Commissioner McCHORD: Well, ask your question, and the witness will be required to answer that, and you are subject to exception.

Mr. SEVERANCE: I make the same objection to that as to the other question, your Honor, and give the same advice to the witness.

Commissioner McCHORD: Yes.

Mr. BOYLE: And the witness declines to answer?

Mr. ELLIS: I decline to answer.

Mr. BOYLE: From what packing house in Omaha do the
205 cars of Armour Car Lines receive their chief loads?

Mr. ELLIS: We are only under contract to furnish Armour & Company cars, but we do furnish them to some of the other packers there, but not in large quantity.

Mr. BOYLE: Are you under contract in Chicago to furnish Armour & Company cars?

Mr. ELLIS: No.

Mr. BOYLE: Have you copies of those contracts with Armour & Company?

Mr. SEVERANCE: I object to that.

Mr. BOYLE: The witness has stated he has such contracts. Do you want to insist on such an objection?

Mr. SEVERANCE: I heard him say that. Now I will not object to his answering this question. I may object to a subsequent question.

Mr. ELLIS: Will you kindly repeat it?

Mr. BOYLE: I asked if you had copies of those contracts?

Mr. ELLIS: No, I have not.

Mr. BOYLE: Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Company for furnishing
cars at different points, called for by any contract that exists?

206 Mr. SEVERANCE: Just a moment. Is that one of the questions that you are going to ask in lieu of a subpoena duces tecum?

Mr. BOYLE: No, I am asking the witness now if he will furnish us with a contract. He has testified that he has such contract.

Mr. SEVERANCE: No, he says he has not, as I understand his last answer.

Mr. BOYLE: He says he has not them with him, but that Armour Car Lines has such contracts with Armour & Company.

Mr. SEVERANCE: But you spoke to me before the hearing about asking some questions in lieu of a subpoena duces tecum. Is this one of the questions?

Mr. BOYLE: No. I simply intended to supplement the witness' testimony. He says such contracts exist, and I ask that he produce them.

Mr. SEVERANCE: I should object to their production by the witness, but I wanted to get it in the right shape.

Commissioner McCHORD: You gentlemen will have to speak a little louder. I cannot hear what you are talking about.

Mr. SEVERANCE: I would advise the witness to decline to produce the contracts.

207 Commissioner McCHORD: The witness will be required to produce the contracts.

Mr. ELLIS: I must refuse to do so under advice of counsel.

Mr. BOYLE: At Sioux City, Mr. Ellis, what packing company furnishes the principal tonnage for Armour Car Lines cars?

Mr. ELLIS: Our contract is with Armour & Company, and we furnish Armour & Company more cars than anyone else there.

Mr. BOYLE: To what other packing company at Sioux City do you furnish cars?

Mr. ELLIS: To Cudahy Packing Company on occasions.

Mr. BOYLE: Any other?

Mr. ELLIS: Not that I recall at the moment.

Mr. BOYLE: What proportion of your cars furnished at Sioux City are furnished to Cudahy Packing Company?

Mr. ELLIS: We are under no contract to furnish Cudahy cars at Sioux City, and we would not—we are under contract to furnish Armour & Company cars there, and the proportion of cars furnished Cudahy at Sioux City is small comparatively.

Mr. BOYLE: Is it two per cent?

Mr. ELLIS: It is small. I do not know just what the percentage would be?

Mr. BOYLE: Would you say that it was almost negligible?

208 Commissioner McCHORD: I think the witness has answered the question. He says it is small.

Mr. BOYLE: At East St. Louis, what packing company furnishes the principal tonnage moved in Armour Car Lines cars?

Mr. ELLIS: Armour & Company.

Mr. BOYLE: At Fort Worth?

Mr. ELLIS: The same there.

Mr. BOYLE: At Denver?

Mr. ELLIS: I think the name of the house there that we furnish most cars to is the Colorado Packing Company.

Mr. BOYLE: Have you any idea how many cars you furnished Denver in the course of a year?

Mr. ELLIS: No, excepting that it would amount to several hundred.

Mr. BOYLE: Are those leased to the Colorado Packing Company?

Mr. ELLIS: No.

Mr. BOYLE: Are they furnished under some understanding or agreement?

Mr. ELLIS: We furnish them on their orders, yes, under an understanding.

209 Mr. BOYLE: Is that understanding verbal or written?

Mr. ELLIS: Verbal.

Mr. BOYLE: What is the nature of the understanding?

Mr. SEVERANCE: I make the same objection to that, and give the same advice to the witness as to the other questions.

Commissioner McCHORD: He may answer.

Mr. ELLIS: I must decline on advice of counsel.

Mr. BOYLE: Do you furnish any cars to any packing houses at Oklahoma City?

Mr. ELLIS: No, they do not need very many cars out there.

Mr. BOYLE: Why do they not need many cars in Oklahoma City.

Mr. ELLIS: Because it is a very small packing plant.

Mr. BOYLE: Did you ever investigate it to see whether it was a small one or not?

Mr. ELLIS: Well, not personally, but that is my information.

Mr. BOYLE: How did you derive that information?

Mr. ELLIS: I have noticed——

Mr. SEVERANCE: If your Honor please, I doubt if it is material, and I suggest that it is not. He says he does not know
210 except what he has been told. That would not be competent testimony.

Mr. BOYLE: The witness has made the statement that they did not need many cars there and——

Examiner McCHORD: I do not understand the witness to answer the question at all. He said they did not need many cars out there, and the question was whether they furnished any at all or not.

Mr. BOYLE: I want to know how he knows that they do not need many cars there.

Commissioner McCHORD: I do not know whether that is material or not. If he knows whether any cars are furnished he may state it. I do not think his answer was responsive to the question.

Mr. ELLIS: I intended to say we do not furnish any. I intended to say that before I made my concluding remark.

Mr. SEVERANCE: It then——

Mr. BOYLE: I want to ask then, in reference to the witness' former answer, from what source he derives his information upon which he basis his statement that they do not need any cars or do not need many at Oklahoma City.

Mr. SEVERANCE: I object to that as immaterial and cross examining him upon an answer that your Honor has already said
211 is not responsive.

Commissioner McCHORD: The witness has volunteered his own answer, and I take it he has the right to examine him on it.

Mr. BOYLE: I take it that the witness made an answer that was not directly responsive, and I think if the witness will answer this last question we can show the material-ty of it.

Commissioner McCHORD: I understand then that the witness refuses to answer?

Mr. SEVERANCE: No, I have not advised him to refuse to answer, but I have suggested to your Honor that it seems to me that question is entirely immaterial to this inquiry.

Commissioner McCHORD: The witness volunteered the statement and counsel has the right to ask him about it.

Mr. SEVERANCE: We think it is not material.

Mr. BOYLE: I will undertake to show its material-ty, if he will answer. I will ask that the witness answer the question.

Mr. SEVERANCE: I understand the Commissioner has ruled.

Commissioner McCHORD: The witness will be required to answer the question.

Mr. BOYLE: Now, Mr. Ellis——

Mr. SEVERANCE: I have not advised him not to answer.

Mr. ELLIS: Will you repeat the question?

Mr. BOYLE: I will ask it again. I want to know from
212 what source you derived the information upon which you
based your statement that they did not need any cars at
Oklahoma City.

Mr. ELLIS: I have noticed the live stock receipts in the Oklahoma market, in a casual way. They certainly do not need any cars of us, they have not ordered any cars of us or indicated that they wanted any of our cars there.

Mr. BOYLE: Mr. Ellis, were the Armour Car Lines served or furnished with certain interrogatories by the Interstate Commerce Commission some time in the spring of last year, late in February or March?

Mr. ELLIS: Yes, sir, I believe so.

Mr. BOYLE: Such interrogatories relating to this proceeding and entitled "In the Matter of Private Cars, Docket No. 4906."

Mr. ELLIS: Yes, sir.

Mr. BOYLE: Did your company answer the interrogatories so propounded?

Mr. ELLIS: We did as far as they pertained to our relations with the railroad.

Mr. BOYLE: Did not the Interstate Commerce Commission take up with your company the question of what they considered the insufficiency of the answers to the interrogatories propounded.

Mr. SEVERANCE: I suppose that is in writings and you
213 might produce the writings.

Mr. BOYLE: It was taken up verbally.

Mr. SEVERANCE: No, the demand was made in writing.

Mr. BOYLE: Yes, but first of all it was verbal.

Mr. SEVERANCE: Was it? I did not know that.

Mr. BOYLE: With Mr. Faulkner, I believe, first, and then we wrote you a letter.

Mr. SEVERANCE: Yes I knew of the correspondence.

Mr. BOYLE: I will get to that later.

Mr. ELLIS: I do not recall——

Mr. BOYLE: Just a moment.

Mr. SEVERANCE: It was not taken up with Mr. Ellis, verbally,
was it?

Mr. BOYLE: No.

Mr. FALKNER: It was a mere discussion of the matter between——

Mr. BOYLE: Can we not admit that the Commission took up with officials of the Armour Car Lines the question of what they considered the insufficiency of the answers to the interrogatories?

Commissioner McCHORD: Well, the Commission knows that it did that.

Mr. BOYLE: Yes.

214 Commissioner McCHORD: Have you the correspondence here? it ought to be a matter of record in this case?

Mr. BOYLE: I have that, but we took it up verbally first.

Mr. SEVERANCE: Commissioner McChord took it up by addressing a letter in regard to certain questions which he said had not been answered.

Mr. FALKNER: Does not the correspondence cover it?

Mr. BOYLE: The correspondence was subsequent to a verbal request, but that will be sufficient, I suppose.

Mr. SEVERANCE: I think the correspondence will settle it. If you want to identify the correspondence, that is another matter.

Commissioner McCHORD: The Commission knows it sent its representatives in an endeavor to get the information, and failing to do so, they then entered into correspondence with the respondents and we have copies of that correspondence.

Mr. SEVERANCE: I do not know whether that correspondence itself is a matter of record with the Commission, so it would be considered part of this record or not, but if not, of course it can be identified.

Commissioner McCHORD: Yes.

Mr. BOYLE: I would like to get that in now. The reason
215 I asked about the verbal communication is that the first document is a telegram from McChord, Commissioner, dated July 3rd, 1913, to Charles J. Faulkner, Jr., 237 South La Salle Street, Chicago, and—

Mr. SEVERANCE: Will you let me see that telegram a minute?

Mr. BOYLE: That is the first I have (handing paper to Mr. Severance).

Mr. SEVERANCE (after examination): Let that go in. I have no objection to it. That is all right, put it in.

Commissioner McCHORD: Let counsel have the entire file, Mr. Boyle and look over it.

Mr. BOYLE: I am doing it now.

Commissioner McCHORD: Just let them have the entire file.

Mr. SEVERANCE: There is no objection whatever to all that going in, your Honor.

Mr. BOYLE: With *the* understanding, I offer in evidence at this point a copy of a telegram from McChord, Commissioner, to Charles J. Faulkner, Jr., dated July 3rd, 1913. Had we not better have it copied in the record?

Commissioner McCHORD: Copy it right in the record, all that correspondence.

Mr. SEVERANCE: Yes, copy it in. You do not need to stop
216 to read it. You can identify it by dates, if you want to, but that is not necessary. You can — it right to the stenographer and have them copied in the record.

Commissioner McCHORD: Let them all be copied right in the record.

Mr. BOYLE: Very well.

(The file of papers as follows:)

Mr. Charles J. Faulkner, 137 So. La Salle St., Chicago:

Please wire today whether icing data will be furnished promptly, also whether Armour line will voluntarily permit check of such records as may be considered necessary.

McCHORD,
Commissioner.

"CHICAGO, 3.

C. C. McChord, Interstate Commerce Commission-, Washington, D. C.:

I explained to Mr. King over telephone this morning the causes of the Armour Car Lines' delay in responding to Mr. Boyle and my regret therefore and owing to the same reason and Mr. King's engagement arranged a meeting with him for Monday afternoon at 2 o'clock at which time I assure you the Armour Car Lines' position in respect to the questions referred to in your telegram will be stated, I regret that I have been unable this week as I promised Mr. Boyle, to have a meeting with the Armour Car Lines, owing to the absence from the city of those necessary to be present. I hope this will be satisfactory to you.

C. J. FAULKNER, JR."

"AUGUST 7, 1913.

Docket No. 4906.

In the Matter of Private Cars.

Amour Car Lines, Mr. F. W. Ellis, Vice-Pres't & Gen'l M'g'r, Union Stock Yards, Chicago, Ill.

GENTLEMEN: This will acknowledge receipt of registered package No. 541,829 from Chicago, Ills., containing statement showing certain information with respect to icing plants and icing stations, which statement has been filed with the report of your company in the above entitled investigation.

218 Your attention is respectfully directed to the fact, however, that all the information required by the Commission in this proceeding has not been furnished. In letter of May 23, 1913 (to which no reply has as yet been received), you were requested to furnish copies of your income, profit and loss, and balance sheet statements for your last fiscal year, as called for by question 9 of the Commission's blank form of report. It was also pointed out in the letter referred to in that form No. 6, in answer to question 10, a summary of operations for three years only was given, while the question and form contemplates a statement of operations for each year since the organization of your company March 11, 1911.

In order that no misunderstanding may exist as to what further information the Commission desires and will require you are requested to furnish without delay—

1. An income statement, showing in detail the credits to income

from all sources and the debts to income of whatever nature, and the total credits and total debits, as shown by the books and records of the Armour Car Lines, as a corporation, for its last fiscal year.

2. A statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits, as shown by the books and records of the Armour Car Lines, as a corporation, for its last fiscal year.

3. A statement showing the amount invested in each icing plant or icing station owned wholly or in part by the Armour Car Lines at the end of the fiscal year.

4. A statement showing separately and in detail the results the last fiscal year from the operation of each icing plant or icing station operated by the Armour Car Lines. The statement would show—

The amount invested in each plant or icing station;

The point or points at which the supply of ice was obtained for each station;

The cost per ton, if transported by rail, from point of supply to storage house;

The cost per ton of labor, and other expenses incident to storing;

The total cost per ton placed in storage plants;

The total cost per ton placed in bunkers or tanks of refrigerator cars.

Statement should also show the number of tons stored in each house each year; the number of tons sold or otherwise disposed of; actual or estimated loss, in tons, from *mileage*; total receipts and total disbursements, in dollars and cents, for each station, and the profit from operation, together with such other information as in your judgment may be pertinent. The statement should cover salt as well as ice.

5. A statement showing the credits to income and the debits to income during last fiscal year from each and every plant or icing station owned solely or in part or operated by the Armour Car Lines.

6. A copy of balance sheet (trial balance) at the end of last fiscal year before accounts were closed.

7. A copy of balance sheet (trial balance) at end of last fiscal year after books were closed.

8. A statement as per form No. 6, of the Commission's blank, showing summary of operation of the Armour Car Lines for each year since the date of its organization to the close of its last fiscal year.

221 In the event your company is not in a position to compile and furnish promptly the information and data as outlined above, on account of lack of clerical force, or for other reason, the Commission will be pleased to send one or more of its representatives to your office at Chicago for the purpose of compiling or assisting in the compilation of such data as it may desire, from the original records of your company.

Your are requested to reply immediately to this communication

and to advise what may be expected from the Armour Car Lines in regard to the requests contained herein.

Yours very truly,
(Signed)

C. C. McCHORD,
Commissioner."

"UNION STOCK YARDS, ILLS., 14.

Hon. C. C. McChord, Interstate Commerce Commission, Washington, D. C.:

Your letter dated Seventh not received until eleventh. Our attorney absent returning this morning immediate consideration being given and reply promptly.

F. W. ELLIS."

222

"August 18, 1913.

Hon. C. C. McChord, Interstate Commerce Commission, Washington, D. C.:

Replying to you- request for detailed information concerning the business of the Armour Car Lines. We are quite willing to appear before the Commission in response to any order made by it based upon a complaint regularly filed or by the Commission on its own motion, touching any specific matter concerning our business if within the jurisdiction of the commission, but we must respectfully decline to go further on your request for voluntary information touching things over which we contend your commission has no jurisdiction.

A. R. URION,
General Counsel Armour Car Lines."

"August 18, 1913.

Hon. C. C. McChord, Interstate Commerce Commission, Washington, D. C.:

Replying to your recent request for detailed information concerning the business of the Armour Car Lines; we are quite willing to appear before the Commission in response to any order made by it based upon a complaint regularly filed *of* by the Commission on its motion, touching any specific matter concerning our business if within the jurisdiction of the Commission, but we must respectfully decline to go further on you- request, for voluntary information touching things over which we contend your Commission has no jurisdiction.

A. R. URION,
General Counsel Armour Car Lines."

"August 18, 1913.

Hon. C. C. McChord, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: In confirmation of my telegram to you today, beg to herewith enclose you copy thereof.

Respectfully yours, ALFRED R. URION,
General Counsel, Armour Car Lines."

224

"October 1, 1913.

Mr. Alfred R. Urion, General Counsel Armour Car Lines, Home Insurance Bldg., 137 So. La Salle St., Chicago, Ills.

DEAR SIR: Please refer to your telegram of August 18th and confirmatory letter of same date, on behalf of the Armour Car Lines, declining to furnish the detailed information with respect to cars and icing stations owned or operated by your company, such information having several times — asked for by this Commission and finally requested in detail in letter of August 7th, to Mr. F. W. Ellison Vice-President and General Manager.

Attached hereto is copy of order of September 15th, service of which was made upon Armour & Company and the Armour Car Lines by registered mail.

As the interests represented by you are now parties respondent to the pending investigation, this is to request that the information asked for in my letter of August 7th be furnished to the Commission with the least possible delay. I shall appreciate immediate advice of the position taken by the Armour Car Lines respecting this request.

Yours very truly,
(Signed)

C. C. McCHORD,
Commissioner."

"October 13, 1913.

Hon. C. C. McChord, Interstate Commerce Commission, Washington, D. C.:

I desire to acknowledge receipt of your letter of October 1st and express my regret that it has not been answered before owing to it being held awaiting my return to the office. I have attentively considered your letter, but *will* all due respect, I must submit that the order of September 15th does not, in my view, change the situation so far as the Armour Car Lines is concerned, and I am constrained to adhere to the position set forth in my telegram addressed to you under date of August 8, 1913, and the confirmatory letters of the same date for the reasons stated in said telegrams and confirmation thereof.

Yours very truly,
(Signed)

ALFRED R. URION,
General Counsel Armour Car Lines."

Mr. BOYLE: I want to state here, however, that the first formal declination from Armour Car Lines was received from their General counsel, Mr. Alfred R. Urion, by telegram I think through Baltimore, dated August 18, 1913, and I might state confirmed by his letter of August 18th, subsequent to which date the Commission, by order of September 15th, 1913, issued its second supplemental order making parties respondent to this proceeding all individuals, firms, companies, and corporations owning and operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce, and caused to

be served by registered mail copies or a copy of that order upon Armour & Company and Armour Car Lines.

227 Then the letter of October 1st, 1913, from the Commission to Mr. Urion, which will appear copied above, was written asking if in view of that order, they still declined, and we got the Armour Car Lines' final declination under date of October 13, 1913.

Commissioner McCHORD: Let me see that correspondence. (Papers handed to Commissioner McChord.) These copies from the Commission do not bear any signature. You had better put that in, if you want a complete copy of the letters.

Mr. BOYLE: All right, sir.

Mr. ELLIS: Have you seen the nine exhibits filed by the Commission in this proceeding?

Mr. ELLIS: Yes, I have seen them, but I have not gone into them carefully.

(Mr. Boyle hands Mr. Ellis one of these exhibits.)

Mr. ELLIS: Thank you, I have one. I am going to analyze it later.

Mr. BOYLE: Yes, but I want you to take this one now. I hand you the nine exhibits to which I have referred, and will ask you to look at Commission's Exhibit No. 3; the second page of that exhibit, Mr. Ellis, at the top, relates to Armour Car Lines. Have you seen that before?

228 Mr. ELLIS: Yes, sir.

Mr. BOYLE: Under the column headed investment, cars, is *is* an item of \$11,878,007. Are you prepared to state now whether or not that is the correct amount?

Mr. SEVERANCE: I desire now to make the same objection to that question.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline, on advice of counsel.

Mr. SEVERANCE: Just one minute. My objection to that is that this is a return made to the Commission by Armour Car Lines, and therefore any inquiry into it would be immaterial, it strikes me. You have Armour Car Lines' specific statement as to this matter, and I do not suppose you want to question that by Mr. Ellis, do you? That item is answered, and answered by Armour Car Lines. I was not objecting and *and* advising him not to answer, but I was merely objecting that it was immaterial.

Commissioner McCHORD: What is the purpose of the question, Mr. Boyle?

Mr. BOYLE: Just a minute, Mr. Commissioner.

229 Mr. SEVERANCE: Of course, I am assuming that this exhibit is correctly transcribed from the report made by Armour Car Lines.

Commissioner McCHORD: Yes, I understand.

Mr. BOYLE: We withdraw that question.

Mr. SEVERANCE: Strike out the objection, then.

Mr. BOYLE: In the next column, Mr. Ellis, under the head of

the other property appears notheing at all. Did Armour Car Lines own any property other than their rolling stock?

Mr. SEVERANCE: Just one moment. I object to that on the grounds first stated in my objection this evening to the first question.

Commissioner McCHORD: Let him answer.

Mr. SEVERANCE: And I advise the witness that he ought not to answer that question.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: In what business is Armour Car Lines engaged?

Mr. ELLIS: In the owning, manufacturing, rebuilding, repairing, renting and leasing cars to railroads and others, as well as furnishing ice and refrigeration service.

Mr. BOYLE: Where are the cars of the Armour Car Lines repaired?

Mr. ELLIS: Our principal shops——

Mr. SEVERANCE: Just one minute.

Mr. BOYLE: I want to cha-ge that question a little bit.

230 Mr. SEVERANCE: Do you want to reframe it?

Mr. BOYLE: Yes.

Mr. SEVERANCE: Very good.

Mr. BOYLE: Where are the -ars of Armour Car Lines repaired? When not repaired in shops of railroads?

Mr. SEVERANCE: I want to state, your Honor, that if this merely involves a question or two for a little information, I do not object to it. But if it is proposed to follow this up in detail and attempt to find out or elicit evidence as to cost of repairs and maintenance of shop, and that sort of thing, I shall object to it, and if counsel will kindly advise me his intention in regard, I will know whether to object to this. The particular question I would not object to, unless it is a part of a series by which counsel is going to to attempt to go into the whole business of Armour Car Lines.

Mr. BOYLE: That is what we are going to do.

Mr. SEVERANCE: I will object to it and give the same advice to the witness as before, for the reasons stated.

Commissioner McCHORD: Answer the question.

Mr. BOYLE: I will state that we want to go into the business of Armour Car Lines in so far as they are engaged in any
231 business affecting transportation, as that term is used in section 1 of the Act to Regulate Commerce, and to that end I think the question asked is relevant and material, and will ask that the Commission direct that it be answered.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline, on advice of counsel.

Mr. SEVERANCE: Now, Mr. Boyle, just to save time, I will state that this same objection will be urged to all questions on this line, and if you desire to frame a series of questions, it may be understood that they are all objected to in the same way, and that the witness declines to answer.

Commissioner McCHORD: That can be done. The objection can be noted to each question.

Mr. SEVERANCE: And the same advice to the witness.

Commissioner McCHORD: And the same advice to the witness, and the Commission's ruling and the witness' response.

Mr. SEVERANCE: Of course, I mean questions along this line. There are many questions that I have no objection whatever to Mr. Ellis answering.

Mr. FAULKNER: It is our thought that possibly a notice that the objection would be made and urged and the advice given might dispense with the necessity for asking the questions, so as to
232 expedite the matter.

Commissioner McCHORD: Yes, I understand.

Mr. BOYLE: If your Honor please, I think there are some other matters we want to ask Mr. Ellis about, to which there doubtless will be the same objection, but we think it best at least to get some idea or outline of these questions on the record.

Mr. SEVERANCE: That is quite right. I think you should.

Commissioner McCHORD: Then just ask your question and let the objection be made, and let it come on regularly, then——

Mr. BOYLE: We will not go into all the details.

Commissioner McCHORD: Go ahead and let us see what you will go into.

Mr. BOYLE: I asked you, I believe, what properties other than rolling stock Armour Car Lines owned, and objection was made and you declined to answer.

233 Mr. SEVERANCE: Read that question.

(Question read as above recorded.)

Mr. SEVERANCE: You are right, that was all disposed of.

Commissioner McCHORD: What do you mean by rolling stock?

Mr. BOYLE: Cars used in interstate commerce.

Mr. SEVERANCE: The question was as to other property than rolling stock.

Mr. BOYLE: Was as to other property, yes.

Mr. SEVERANCE: Your question was as to other property than rolling stock?

Mr. BOYLE: Yes, that is correct.

Commissioner McCHORD: Does this company own any engines?

Mr. BOYLE: They do not so report.

Mr. SEVERANCE: I beg your pardon.

Mr. BOYLE: I don't think so.

Mr. ELLIS: Engines, he asked. No engines.

Mr. SEVERANCE: No.

Mr. BOYLE: No, no engines. What facilities have Armour Car Lines for performing refrigeration?

Mr. ELLIS: It has the cars.

Mr. BOYLE: Understand, Mr. Ellis, please, that by refrigeration I mean icing.

234 Mr. ELLIS: Icing as distinguished from refrigeration as such, from point of shipment to destination.

Mr. BOYLE: By refrigeration I mean the placing of ice in the bunkers of cars.

Mr. SEVERANCE: What do you mean by icing them, Mr. Boyle?

Mr. BOYLE: That is what I meant to convey when I asked what facilities he had for refrigeration, as distinguished from refrigerators.

Mr. SEVERANCE: There are both, you know, Mr. Boyle; there are two features of that; icing and the refrigeration, and Mr. Ellis seems to be lost on which one you want.

Mr. ELLIS: I believe I understand it now.

Mr. SEVERANCE: You understand, do you?

Mr. ELLIS: Yes.

Mr. BOYLE: Oh, you are distinguishing between icing on a tonnage basis and refrigeration on a car basis, is that the idea?

Mr. ELLIS: I am distinguishing as between the furnishing of refrigeration from point of shipment to destination, and being responsible for that; and simply furnishing ice in the bunker of the car at one particular point, we will say, in transit.

235 Mr. BOYLE: Then I will ask what facilities Armour Car Lines has for furnishing either or both of those services?

Mr. ELLIS: I believe the Commission already has a list of all of our icing stations.

Mr. BOYLE: Let us understand now, what an icing station is, Mr. Ellis, will you, please?

Mr. ELLIS: Some place where a car can be iced in transit or before loading.

Mr. BOYLE: Is it necessary to have an ice house there in which to keep the ice for this purpose?

Mr. ELLIS: In a good many stations of the Armour Car Lines the ice is shipped in carloads and handled from the car in carloads into the bunkers of cars.

Mr. BOYLE: At Altoona, Pennsylvania, for instance, what facilities have Armour Car Lines for performing either or both of these services?

Mr. ELLIS: We have a station of over 15,000 tons storage capacity equipped with platforms and other means of handling ice expeditiously from the storage into the bunkers of the cars.

Mr. BOYLE: Do you maintain a force there to carry on this work?

235½ Mr. ELLIS: The year around, yes, sir.

Mr. BOYLE: At Karner, New York?

Mr. ELLIS: We haven't any station there now.

Mr. BOYLE: It burned down?

Mr. ELLIS: It burned down, yes.

Mr. BOYLE: At Potomac Yards, Virginia.

Mr. ELLIS: We have platforms built to the height of the tops of the cars sufficient to accommodate forty cars at one time, with trestles over which ice in carloads is run to the level of these upper platforms. In connection with that station we have a small storage house for emergency, quite an important improvement.

Mr. BOYLE: And at East St. Louis, Illinois?

Mr. ELLIS: The Armour Car Lines icing station at East St. Louis,

Illinois has a storage capacity of about 10,000 tons, and they are equipped to do all kinds of icing and re-icing of refrigerator cars.

Mr. BOYLE: Do they manufacture any ice there?

Mr. ELLIS: No, sir, they do not.

Mr. BOYLE: At Columbus, Ohio?

Mr. ELLIS: Much the same condition obtains there as at East St. Louis.

236 Mr. BOYLE: At those places then, except Potomac Yards, you have ice houses in which ice is stored, if I understand you correctly?

Mr. ELLIS: At those particular points, yes, sir.

Mr. SEVERANCE: He said he had a small one at Potomac Yards.

Mr. BOYLE: A small one?

Mr. SEVERANCE: Yes, for emergency.

Mr. ELLIS: I might say in further answer to your general question as to what facilities we have—

Mr. SEVERANCE: Speak a little louder, Mr. Ellis; I can't hear you.

Mr. ELLIS: I might say in further answer to your question, that at these stations, such as East St. Louis, Columbus, and Altoona, and our other icing stations, more particularly used for fruit car icing, that the business is divided between the fruit, say the fruit 75 per cent, approximately 75 per cent; and the packing house products, dairy, 25 per cent, and Armour & Company business for which ice is furnished, cars of Armour & Company's product, 5 per cent of the whole.

Mr. BOYLE: Upon what records do you base the figures that you have just recited, Mr. Ellis? Upon what figures or compila-
237 tions, or investigations?

Mr. ELLIS: The knowledge of the approximate quantity of ice bought by the Armour Car Lines during the past year, and the different purposes for which it is used, or for which it was used.

Mr. BOYLE: Upon what do you base your statement that the business of Armour & Company requiring refrigeration constituted 5 per cent of the whole?

Mr. ELLIS: It is an approximation based upon the quantity that I estimate is furnished Armour & Company at the different Armour Car Lines stations.

Commissioner McCHORD: How do you get that estimate?

Mr. ELLIS: I figure that the business at these stations,—that Armour & Company's business at these stations is 25 per cent of the whole, approximately 25 per cent of the whole.

Mr. SEVERANCE: 25 per cent of the whole?

Mr. ELLIS: 25 per cent of the whole business done at those stations.

Mr. BOYLE: Armour & Company's business?

Mr. SEVERANCE: You did not understand the question, I don't believe.

238 Mr. ELLIS: I beg pardon.

Commissioner McCHORD: No, I wanted to know where you got your information. Do you see all this ice delivered?

Mr. SEVERANCE: No.

Commissioner McCHORD: And see the work done, or do you get it from your records?

Mr. ELLIS: I get it from my records, your Honor, and which are based on accounts going through that I am responsible for.

Mr. SEVERANCE: That last answer, I think, Mr. Ellis, I think you misspoke yourself there. Read that answer.

Mr. BOYLE: He said 25 per cent the last time.

Mr. SEVERANCE: Yes, I thought he said 25 per cent the last time.

Mr. BURR: He said 25 per cent at the particular stations.

Mr. SEVERANCE: What did you mean by those two answers, if you don't mind my asking the witness, Mr. Boyle. You spoke, Mr. Ellis, in one case of the proportion being 5 per cent and in another case 25 per cent.

Mr. ELLIS: The 5 per cent that I refer to is the proportion that Armour & Company used of the entire purchase of ice by the Armour Car Lines; and the 25 per cent proportion was the
239 proportion of ice or the approximation of ice furnished at East St. Louis, Columbus, Altoona and stations of that class, to cars containing Armour & Company product.

Mr. BOYLE: The 5 per cent then related to the total of all your icing stations?

Mr. ELLIS: The entire ice purchased by Armour Car Lines.

Mr. BOYLE: At all stations, all points?

Mr. ELLIS: Yes.

Mr. BOYLE: With whom is settlement made, or by whom is settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Company.

Mr. SEVERANCE: I object to that and advise the witness not to answer the question, the same as before.

Commissioner McCHORD: The same answer.

Mr. ELLIS: I decline to answer on advice of counsel.

Commissioner McCHORD: You get his full answer there, every time, Mr. Reporter?

(Answer read as above recorded.)

Mr. BOYLE: From whom do Armour Car Lines receive payment directly for refrigeration or icing service performed?

Mr. BURR: Performed for whom, Mr. Boyle?

Mr. BOYLE: Performed for shipments of packing house
240 products generally.

Mr. ELLIS: For the railroads, as a general proposition.

Mr. BOYLE: When it is not received from the railroads from what source is it received?

Mr. ELLIS: We might in some cases bill direct for it against the shipper.

Mr. SEVERANCE: Read that answer. I could not hear it.

(Answer read as above recorded.)

Mr. BOYLE: In what instances would that be done and is it done, Mr. Ellis?

Mr. SEVERANCE: Will you kindly read that question? I could not hear it.

(Question read as above recorded.)

Mr. SEVERANCE: Has the question been answered? Just read him the question.

Mr. ELLIS: I know the question.

Mr. SEVERANCE: Well, we would like to know what the question is. Mr. Urion don't remember it.

(Question re-read as above recorded.)

Mr. ELLIS: We bill directly against Armour & Company for ice furnished.

Mr. SEVERANCE: Mr. Ellis, can you speak louder? I am a
241 little bit hard of hearing. I don't hear any of your answers without having them read a second time.

Mr. ELLIS: I will see if I can not.

Mr. SEVERANCE: Will you read that answer, please?

(Answer read as above recorded.)

Mr. BOYLE: Is that for all ice furnished Armour & Company or just in certain instances that you so bill direct?

Mr. SEVERANCE: I object to that and advise the witness not to answer that question on the ground, first stated in my first objection this evening.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: Do you bill direct upon any shippers other than Armour & Company?

Mr. ELLIS: I am quite sure we do but I cannot state positively. As a rule, however, the railroads settle with us for the ice.

Mr. BOYLE: Mr. Ellis, your report to the Commission contained a list of icing stations in which Armour Car Lines were interested, that is in which they had some ownership. Some of these stations they owned outright and others they owned from 25 to 50
242 per cent interest in. Are you familiar with that statement?

The idea of this is that I want to get a list of these stations in the record here.

Mr. SEVERANCE: Are they not in the record now in your report?

Mr. BOYLE: The report is not a part of the record.

Mr. ELLIS: Yes.

Mr. SEVERANCE: Why not just read it from the report?

Mr. BOYLE: I think there are some changes in some of the stations.

Mr. SEVERANCE: Are there?

Mr. ELLIS: I don't think there has been since the report was made. The report is more accurate than I could give it to you out of my head. I think it is substantially correct at the present time.

Mr. BOYLE: Well, it will be sufficient for the purposes of this record, to have the witness admit that in addition to the stations already named, there are more, maybe a dozen or two dozen more, of more or less importance.

Mr. ELLIS: No——

Mr. SEVERANCE: I don't think I would do it that way. Why don't you put the report in and then we will have it accurate,

243 Mr. BOYLE: That has been furnished by Armour Car Lines.

Mr. ELLIS: No, there are no other stations than those mentioned of joint ownership or owned jointly.

Mr. SEVERANCE: May I see that report for a moment, please?

(Document handed to Mr. Severance.)

— All right. You can have it copied right into the record, can't you?

Mr. BOYLE: Yes. This paper that I have, Mr. Ellis, is the response of Armour Car Lines to a portion of the interrogatory relating to icing stations, and I will ask to have a list of those stations copied at this place in the record, those all being stations in which Armour Car Lines has an interest to the extent of from 25 per cent to 100 per cent ownership.

Commissioner McCHORD: Let the witness see the statement.

Mr. BOYLE: I have shown it to his counsel.

Commissioner McCHORD: But the witness is going to tell about it. He ought to see it.

Mr. ELLIS: Mr. Boyle, will you kindly have shown the various percentages indicating the extent of our ownership?

Mr. BOYLE: Yes, let that go in also.

244 Rome, Ga.; operated under the name of Armour Car Lines; located on W. & A., sole owners.

Seneca, S. C.; operated under the name of Armour Car Lines; located on Southern; sole owners.

So. Rocky Mount, N. C., operated under the name of Armour Car Lines; located on A. C. L., sole owners.

West Jacksonville, Fla.; operated under the name of Armour Car Lines; located on S. A. L.; sole owners.

Norfolk, Va.; operated under the name of Armour Car Lines; located on N. Y. P. & N.; sole owners.

Norfolk, Va., operated under the name of Armour Car Lines; located on Belt Junction; sole owners.

De Queen, Ark.; operated under the name of Armour Car Lines; located on Kans. City Sou.; sole owners.

Marshallville, Ga.; operated under the name of Armour Car Lines; located on C. of Ga.; sole owners.

Port Huron, Mich.; operated under the name of Armour Car Lines; located on Pere Marquette; sole owners.

245 Mr. SEVERANCE: The full exhibit itself will be copied in?

Mr. BOYLE: Yes, just copy that in.

Mr. SEVERANCE: It is a statement of the Armour Car Lines.

(Said document is in words and figures following, to wit:)

Altoona, Pennsylvania; operated under the name of Armour Car Lines; located on Pennsylvania Railroad; sole owners.

Columbus, Ohio; operated under the name of Armour Car Lines; located on P. C. C. & St. L. R. R.; sole owners.

East St. Louis, Ills.; operated under the name of Armour Car Lines; located on Terminal R. R.; sole owners.

Toledo, Ohio; operated under the name of Armour Car Lines; located on L. S. & M. S. R. R.; sole owners.

Karner, N. Y.; operated under the name of Armour Car Lines; located on N. Y. C. & H. R. R. R.; 50% interest.

Del Ray, Mich.; operated under the name of Swift & Company; located on Wabash R. R.; 25% interest.

Havelock, Ontario-Can.; operated under the name of Swift & Company; located on Canadian Pacific R. R.; 25% interest.

Nashua, N. H.; operated under the name of Swift & Company; located on Boston & Maine, 25% interest.

Newport, Vermont, operated under the name of Swift & Company; located on Canadian Pacific; 25% interest.

246 Ashburn, Ga., operated under the name of Armour Car Lines; located on G. S. & F. R. R.; sole owners.

Atlanta, Ga., operated under the name of Armour Car Lines; located on L. & N.; sole owners.

Atlanta, Ga., operated under the name of Armour Car Lines; located on A. B. & A.; sole owners.

Atlanta, Ga., operated under the name of Armour Car Lines; located on W. & Atlantic; sole owners.

Augusta, Ga., operated under the name of Armour Car Lines; located on Ga. & Fla.; sole owners.

Augusta, Ga., operated under the name of Armour Car Lines; located on Georgia, 5% (in Platform).

Benton Harbor, Mich., operated under the name of Armour Car Lines; located on Pere Marquette; sole owners.

Benton Harbor, Mich., operated under the name of Armour Car Lines; located on C. C. C. & St. L.; Sole owners.

Cincinnati, Ohio, operated under the name of Armour Car Lines; located on C. N. O. & T. P.; sole owners.

Douglas, Ga., operated under the name of Armour Car Lines; located on G. & F.; sole owners.

Ft. Valley, Ga., operated under the name of Armour Car Lines; located on C. of Ga.; 60% interest (in ice house).

247 Grand Rapids, Mich., operated under the name of Armour Car Lines; located on the Pere Marquette; sole owners.

Kansas City, Kans., operated under the name of Armour Car Lines; located on Kansas City Southern; sole owners.

Michigan City, Ind., operated under the name of Armour Car Lines; located on Pere Marquette, sole owners.

Meggett, S. C., operated under the name of Armour Car Lines; located on A. C. Line, Sole owners.

Mena, Ark., operated under the name of Armour Car Lines; located on Kansas City Southern; Sole owners.

Montgomery, Ala., operated under the name of Armour Car Lines; located on Atlantic Coast Line; sole owners.

Mt. Olive, N. C., operated under the name of Armour Car Lines; located on A. C. Line; sole owners.

Potomac Yards, Va., operated under the name of Armour Car Lines; located on Southern; sole owners.

Richland, Ga., operated under the name of Armour Car Lines; located on Seaboard Air Line; sole owners.

Rockwood, Tenn., operated under the name of Armour Car Lines; located on C. N. C. & T. P.; sole owners.

Rome, Ga., operated under the name of Armour Car Lines; located on Southern; sole owners.

248 Mr. BOYLE: I understand, Mr. Ellis, that these are all of the stations in which Armour Car Lines have any ownership?

Mr. ELLIS: Will you allow me to see that statement again?

(Statement handed to witness.)

I believe this is a complete list.

Mr. BOYLE: Mr. Ellis, is it or is it not a fact that Armour Car Lines contract for the furnishing of refrigeration on through shipments and undertake to perform the necessary icing to insure such refrigeration at stations other than those upon this list?

Mr. SEVERANCE: Just wait one minute. Will you kindly read that question, please?

(Question read as above recorded.)

Mr. SEVERANCE: The contracts with whom, Mr. Boyle?

Mr. BOYLE: Railroad companies.

Mr. SEVERANCE: We have no objection to the question.

Mr. ELLIS: Yes, our cars are iced at other points than those mentioned.

Mr. BOYLE: Do Armour Car Lines manufacture all of their own equipment?

Mr. SEVERANCE: I object to that, if your Honor please, on 249 the grounds stated in my first objection tonight, and advise the witness that he should not answer the question as it relates to a private manner.

Commissioner McCHORD: The witness will answer the question.

Mr. ELLIS: I decline on advice of counsel.

Mr. BOYLE: I might state that we are not at all concerned with the manufacture of equipment by Armour Car Lines except to the extent that we think the Commission is entitled to the information respecting the construction of any facility or instrument of carriage engaged in interstate commerce. The principal object of the question was to eliminate, if possible, certain business of Armour Car Lines that we possibly might not be very much interested in.

Commissioner McCHORD: Well, the witness has declined to answer.

Mr. BOYLE: Yes. I want that explanation in the record at this time, however.

Commissioner McCHORD: Yes.

Mr. BOYLE: Mr. Ellis, your answer to the question, what business is the Armour Car Lines engaged in, includes all of the 250 objects for which the Car Lines were incorporated?

Mr. SEVERANCE: Well, that—

Mr. BOYLE: I just wanted to know whether his statement was practically a recital of that.

Mr. SEVERANCE: I suppose we cannot tell without the best evidence; the best evidence would be the articles of incorporation and not the witness' recollection.

Mr. BOYLE: I understand that.

Commissioner McCHORD: Have you the articles of incorporation?

Mr. BOYLE: No.

Mr. SEVERANCE: The witness has testified as to the business they do.

Mr. BOYLE: I will ask the witness if owning, manufacturing, rebuilding, repairing, renting—

Mr. SEVERANCE: What is the last?

Mr. BOYLE: Renting, and leasing of cars, and furnishing ice and refrigeration service is all of the business in which Armour Car Lines are engaged.

Mr. ELLIS: Yes, practically so. There might be something else that I have overlooked, but I think not.

Mr. BOYLE: Mr. Ellis, the Armour Car Lines were asked
251 by the Interstate Commerce Commission to furnish, and I quote now from the written request, "an income statement showing in detail the credits to income from all sources, and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year."

I now ask for the same statement with this modification, that the Commission desires an income statement showing in detail the credits to income, and the debits to income of whatever nature, and the total credits and total debits as shown by the books of the Armour Car Lines, as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation, as that term is defined in Section 1 of the Act to Regulate Commerce. I ask you if such a statement will be furnished?

Mr. SEVERANCE: I don't think that the witness is the proper person to answer that. But just a moment.

I am authorized to state, however, that Armour Car Lines will respectfully decline to furnish that statement as asked, upon
252 the grounds stated in the first objection that I made this evening.

Commissioner McCHORD: Well, the witness will be required to furnish the information and the statement as called for.

Mr. BOYLE: And on advice of counsel—

Mr. SEVERANCE: And I advise the witness to decline to produce the statement.

Mr. ELLIS: I must decline to produce the statement on advice of counsel.

Mr. BOYLE: The letter or copy of letter that I have before me is now a part of the record, having been incorporated in the record.

Commissioner McCHORD: Copied in the record?

Mr. BOYLE: Yes.

Mr. SEVERANCE: That is right.

Mr. BOYLE: So I may just refer to it then, identify it and refer to it to save the trouble of reading it?

Commissioner McCHORD: Yes.

Mr. SEVERANCE: Yes.

Mr. BOYLE: I refer to letter over the signature of C. C. McChord, Commissioner, dated August 7, 1913, addressed to Armour Car Lines, Mr. F. W. Ellis, Vice-President and General Manager, and
253 already made a part of this record, page 2 thereof, paragraph numbered 2.

The same statement is asked for now with the modification that it will be satisfactory to the Commission for Armour Car Lines to eliminate, if such elimination can be made with accuracy, so much of the statement as relates to the business of Armour Car Lines that does not affect or relate to the furnishing of transportation as that term is defined by Section 1 of the Act to Regulate Commerce.

Mr. SEVERANCE: Just what is that paragraph, that is if you want the witness to give an answer.

Commissioner McCHORD: Now, Mr. Boyle, you are asking the witness a question. Let the witness know just what you are talking about.

Mr. BOYLE: I thought he had already seen that when I put it in.

Commissioner McCHORD: No, the witness is not a mind reader.

Mr. SEVERANCE: Which one is that?

Mr. BOYLE: Statement No. 2.

Commissioner McCHORD: Read it.

Mr. SEVERANCE: Will I read it?

Mr. BOYLE: I will read it.

254 Commissioner McCHORD: Let counsel read it.

Mr. BOYLE: The statement is a statement showing in detail all credits and all debits to profit and loss and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year.

Mr. SEVERANCE: Just one moment.

Commissioner McCHORD: Now, you want that information qualified as you have indicated?

Mr. BOYLE: Yes, sir.

Mr. BURR: Wait just a minute, Mr. Ellis.

Mr. SEVERANCE: Just one moment, if your Honor please.

Commissioner McCHORD: Yes.

Mr. SEVERANCE: I make the same objection to that question as to the first question this evening; and the additional objection that the question is indefinite, and I advise the witness to decline to furnish or attempt to furnish the statistics asked for.

Commissioner McCHORD: The witness will be required to answer the question.

Mr. ELLIS: I must decline to answer it on advice of counsel.

255 Mr. SEVERANCE: Did you complete the record by direction,

Mr. Commissioner?

Commissioner McCHORD: Yes, by direction.

Mr. ELLIS: Yes.

Commissioner McCHORD: He gets that every time.

Mr. BOYLE: Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines?

256 Mr. SEVERANCE: I object on the same ground as the first objection I made this evening.

Commissioner McCHORD: He will answer.

Mr. SEVERANCE: And advise the witness not to answer.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business?

Mr. SEVERANCE: I will object to that on the same ground.

Commissioner McCHORD: Let him answer.

Mr. SEVERANCE: And give the same advice.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: What is done with the cars manufactured by Armour Car Lines?

Mr. SEVERANCE: Same objection.

Commissioner McCHORD: Answer the question.

Mr. SEVERANCE: And the same advice to the witness.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines?

257 Mr. SEVERANCE: Just wait a moment; we make the same objection and give the same advice. It involves the same fundamental question, your Honor.

Commissioner McCHORD: Yes. Answer the question.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: Will you furnish an income statement showing in detail the credits to income and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting and leasing cars, and furnishing icing and refrigeration service?

Mr. SEVERANCE: The same objection and advice to the witness.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline to answer on advice of counsel.

Mr. BOYLE: Please furnish a statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting

258 and leasing cars, and furnishing icing and refrigeration service.

Mr. SEVERANCE: That is in the shape of a request. Do you want to ask him a question based on that?

Mr. BOYLE: I asked him to please furnish that.

Mr. SEVERANCE: You ask the witness if he will furnish that?

Mr. BOYLE: Yes.

Mr. SEVERANCE: The request or question, whichever it may be termed, is objected to.

Commissioner McCHORD: He is asking the witness to do that.

Mr. SEVERANCE: I beg pardon.

Commissioner McCHORD: He is asking the witness to furnish this information.

Mr. SEVERANCE: Yes. I say I will object to it, either as a request or a question whichever it may properly be termed, upon the ground as stated.

Commissioner McCHORD: You seemed to have some doubt as to which it was, and I just wanted to let you understand.

Mr. SEVERANCE: I don't really know which it is.

Commissioner McCHORD: Yes.

Mr. SEVERANCE: It is perfectly polite anyway, whichever way it may be termed. It is all right, there is no objection to that. I advise the witness to decline to furnish the statistics requested.

Mr. BURR: Upon the ground already stated.

Mr. SEVERANCE: Upon the ground already stated repeatedly.

Commissioner McCHORD: The witness will be required to furnish the information and to answer the question.

Mr. ELLIS: I decline on the advice of counsel.

Mr. BOYLE: Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the end of its last fiscal year, and by icing station is meant station at which icing and refrigeration is done.

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes.

Mr. SEVERANCE: I advise Mr. Ellis to decline the request of counsel. My advice is based on the ground stated in my first objection this evening.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I decline on advice of counsel.

260 Mr. BOYLE: Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by rail, from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes.

Commissioner McCHORD: What year do you refer to?

Mr. SEVERANCE: During which year?

261 Mr. BOYLE: The last fiscal year.

Mr. SEVERANCE: I make the same objection and give the witness the same advice as I have regarding these other questions, upon the grounds first stated in my first objection this evening.

Commissioner McCHORD: The witness will answer the question and be required to furnish the information.

Mr. ELLIS: I must decline to do so on advice of counsel.

Mr. BOYLE: Will counsel agree that each of the questions embraced in the last question were also asked separately and separately declined?

Mr. BURR: Oh, by all means.

Mr. SEVERANCE: Oh, certainly.

Mr. BOYLE: Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines?

Mr. SEVERANCE: Is that all?

Mr. BOYLE: Yes, sir.

Mr. SEVERANCE: I make the same objection to the question as I made in the first objection I urged this evening.

Mr. BOYLE: And the same answer of the witness.

Mr. ELLIS: I decline to answer on advice of counsel.

261½ Mr. BOYLE: Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed?

Mr. SEVERANCE: You have two up there. Do you want to put them together or consider them as separate?

Mr. BOYLE: Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour Car Lines for the last fiscal year after the books were closed; these two requests being made separately.

Mr. SEVERANCE: They are objected to separately, and the witness is advised not to furnish the information requested, on the grounds stated in the first objection made this evening.

Commissioner McCHORD: The witness will be required to answer the question and furnish the information.

Mr. ELLIS: I decline to answer, on advice of counsel.

Mr. BOYLE: Mr. Ellis, I hand you the report made by your company in answer to interrogatories propounded by the Commission, that particular answer being the answer to Question 10 on Form No. 6—

Mr. SEVERANCE: Is that in your exhibits here?

262 Mr. BOYLE: No, it is one of the reports. And covering what years, Mr. Ellis.

Mr. SEVERANCE: The paper shows for itself.

Mr. BOYLE: I have not introduced it.

Commission McCHORD: No, but you are asking him about it.

Mr. BOYLE: He has it in his hand and can tell me what three years they are.

Mr. ELLIS: This statement shows that——

Mr. SEVERANCE: What years does it purport to cover?

Mr. BOYLE: What years, is all I want to know.

Mr. ELLIS: It refers to years ending October 22nd, 1910, November 4th, 1911, and November 2nd, 1912.

Mr. BOYLE: The question referred to asked for information from the date of incorporation of Armour Car Lines. I ask you now if you will give us information to the extent that you have already given it for those three years, to cover the period from the date of incorporation of Armour Car Lines.

Mr. SEVERANCE: I object to that and advise the witness to decline to furnish the additional information on the grounds stated in our first objection.

Commissioner McCHORD: Let him answer.

Mr. ELLIS: I must decline, on advice of counsel.

Mr. BOYLE: Mr. Ellis, why did Armour Car Lines report
263 the last three years and not any further? Why did they stop at 1910.

Mr. SEVERANCE: Just wait one minute. I make the same objection and give the same advice, and advise the counsel that I shall object to all further questions on that subject.

Commissioner McCHORD: Answer the question.

Mr. ELLIS: I decline, on advice of counsel.

Commissioner McCHORD: What did the interrogatory call for?

Mr. BOYLE: I was trying to avoid getting it all into the record. I will read——

Commissioner McCHORD: No. Just how many years did you call for?

Mr. BOYLE: Since the date of incorporation of the Armour Car Lines.

Commissioner McCHORD: Now then, he only furnished three years?

Mr. BOYLE: He only furnished three years, 1910, 1911 and 1912.

Commissioner McCHORD: That makes it clear.

Mr. BOYLE: And I want to know why he stopped in 1910 and why we cannot get it all.

264 Commissioner McCHORD: You asked him that, and he declined to answer.

Mr. BOYLE: Yes. If your Honor please, I can go no further in my examination of Armour Car Lines. I understand that the witness Ellis represents the policy of the Car Lines, and that none of his declinations are because of lack of information.

Mr. SEVERANCE: That is correct.

Mr. BURR: That is our understanding.

Mr. SEVERANCE: That may be so taken.

Mr. BOYLE: That being the case, I will have to cease the examination, certainly along this line, in so far as it relates to Armour Car Lines. But the information is so vital to a proper consideration of the investigation contemplated by our order, that I will ask that

the Commission direct that proceedings be instituted without further delay, in the manner provided by the Act, to require this respondent as represented by Mr. Ellis, to answer.

I may state that Mr. Ellis is here in answer to a subpoena from the Interstate Commerce Commission.

I think, while we are considering this matter, that it might
265 be well in view of the intimated private nature of the business of Armour Car Lines, and the apparent contention that they are not either engaged in interstate commerce or engaged in any business affecting it or otherwise holding themselves out as common carriers or agents of common carriers, for the Commission to consider why and by what right the officials of Armour Car Lines ride on interstate passes furnished by railroads.

I have here a list of the railroads furnishing such passes and a list of the officials by title; I have their names elsewhere and the character of pass used. And if Armour Car Lines is not a common carrier nor an agent of a common carrier, and understand, I am not contending, neither admitting or denying that they are either, but if they are not a common carrier, or agent of a common carrier, I think the Commission might well inquire into the question of those passes.

Commissioner McCHORD: Well, let us put that into the record. Have you a record there that shows a list of the passes furnished those officials?

Mr. BOYLE: I have only a memorandum of it, sir. I take it that we can prepare it and file it very easily. I did not know
266 whether your Honor wanted it in this record, or whether evidence of this character had best be presented elsewhere.

Commissioner McCHORD: Well we want the facts to appear in this record, that this transportation is issued.

Mr. BOYLE: Possibly it will be admitted. If not, we can show it.

Commissioner McCHORD: Let us see what you have there.

(Papers submitted by Mr. Boyle to Commissioner McChord.)

Mr. BOYLE: I then offer in evidence a memorandum compiled from reports made to the Interstate Commerce Commission by carriers, by railroads subject to the Act, under oath, in answer to interrogatories propounded by the Commission in this proceeding; this memorandum showing the name of the railroad, the car line to whom the pass is issued, the title of employe using pass, the number of such passes, the kind of pass, whether annual, term or trip, and a column for remarks. Wherever there was a limitation on a pass, we have endeavored to note it.

This is just a memorandum taken from these reports. It does not show the name of the official, but it shows his title. We can

readily furnish from the same records the name of the
267 official and more complete date. For instance, where we show

21 issued to traveling agents of Armour Car Lines on the Atlantic Coast Line, our other report shows the names of those 21 men. We have not endeavored to put them on here, as it would take too much space to show them all.

It is not necessary at this time to attempt to prove the actual trips made or transportation performed on these passes, but we stand ready to show that at any time that it may be necessary.

Commissioner McCHORD: That list is not confined to the Armour Car Lines?

Mr. BOYLE: No, it contains some other car lines too.

Commissioner McCHORD: Let the whole memorandum go in.

(The document so offered and identified, was received in evidence and thereupon marked Commission's Exhibit No. 12, received in evidence January 22nd, 1914, and is attached hereto.)

Mr. ELLIS: Could I ask a question.

Commissioner McCHORD: Yes.

Mr. ELLIS: Is there an officer of the Armour Car Lines on that list? I believe you said officials.

Mr. BOYLE: If I said officer, by that I meant titled employees.

268 Mr. ELLIS: Agents or field men?

Mr. BOYLE: Agents, people on your pay roll.

Mr. ELLIS: Engaged in the handling of fruit for railroads under refrigeration, and this transportation provided for according to contracts with railroads?

Mr. BOYLE: That may or may not be so, Mr. Ellis. I do not know.

Mr. ELLIS: Well, it is so, so far as we are concerned.

Mr. BOYLE: I would not argue that with you.

Mr. SEVERANCE: Let us not go into that now. Counsel has merely offered his memorandum.

Mr. BOYLE: That is all we have with Mr. Ellis, your Honor. I do not suppose there is any cross examination.

Commissioner McCHORD: I understand from counsel's statement that Mr. Ellis has furnished all the information that the Armour Car Lines would be willing to furnish the Commission with respect to the matters inquired about.

Mr. BURR: With respect to the matters concerning which objection was made, and the witness refused to answer. There might be a great many things on which inquiry could be made to which no objection would be made.

Commissioner McCHORD: Yes.

269 Mr. SEVERANCE: As there were tonight.

Commissioner McCHORD: Well, the Commission will undertake to require this information to be furnished, and proceed in the proper tribunal to get it. We will take a recess now until tomorrow morning at 10:00 o'clock.

Mr. BOYLE: And will also give some consideration to the memorandum respecting passes.

Commissioner McCHORD: Well, that is a matter that we will not consider now.

Mr. SEVERANCE: I did not hear what your Honor said just now.

Commissioner McCHORD: I said the Commission will take the proper steps to require this information to be furnished.

Whereupon at 10:00 o'clock P. M. an adjournment was taken to Friday, January 23d, 1914, at 10:00 o'clock A. M.

(Endorsed:) Filed Feb. 4, 1914. T. C. MacMillan, Clerk.

270 And afterwards to-wit: on the eleventh day of February, 1914, came the Respondent in said entitled cause by his attorney and filed in the Clerk's office of said Court his certain Answer in words and figures following to-wit:

270½ In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION

v.

FREDERICK W. ELLIS.

Answer of Respondent.

Frank B. Kellogg, Cordenio A. Severance, Robert E. Olds, Alfred R. Urion, C. J. Faulkner, Jr., Attorneys for Respondent.

271 In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION

v.

FREDERICK W. ELLIS.

Answer.

Now comes Frederick W. Ellis, the above named respondent, and answering the petition of the Interstate Commerce Commission herein, says:

1. The respondent admits that the Interstate Commerce Commission was created and organized and exists under and by virtue of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplemental thereto. He does not admit that said Commission has the powers and authority or is subject to the duties enumerated and averred in the petition and refers to the said acts above mentioned as the only source of its authority, powers and duties.

272 2. The respondent admits that Armour & Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois and engaged in the manufacture and sale of fresh meats and packing house products and in the shipment of such meats and products in interstate commerce over lines of railroad

operated by various common carriers subject to said Act to Regulate Commerce and to the acts amendatory thereof and supplemental thereto.

3. The respondent admits that the Armour Car Lines is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and avers that the business in which said Armour Car Lines is engaged is as follows:

(a) It owns, manufactures, maintains and repairs refrigerator, tank and box cars of type suitable for use in the transportation of fresh meats, fruits, vegetables and other perishable food products, and also in the transportation of certain oils, such as oleo oil and cotton seed oil.

(b) By arrangements made directly with railroads and also made indirectly with railroads through shippers, the said Armour Car Lines furnishes to railroads the cars so owned, manufactured, maintained and repaired by it, and receives from the various railroads for the use of said cars rentals, usually based upon the mileage made by said cars, but sometimes computed on the basis of the per diem use thereof, or upon a car trip basis or upon a monthly rental basis. In certain cases said Armour Car Lines rents the cars so owned by it to shippers on a monthly rental basis, obligating itself in most instances to keep said cars in repair, and said shippers reserving the right to collect from the railroads over which said cars may run all mileage or per diem earned thereby and to retain the same. The receipts of the said Armour Car Lines arising from the rental of

273 said cars, together with the bases upon which such receipts are computed, are fully indicated and described in the answers to interrogatories propounded by the Interstate Commerce Commission, which answers are hereinafter more particularly referred to.

(c) It owns and operates, in some instances as sole owner and operator, and in others as part owner (but do not operate) icing plants or icing stations so-called, located at certain points on various lines of railway throughout the United States. The said icing plants or icing stations are enumerated, their respective locations described, and the proportionate interest of said Armour Car Lines in each of them indicated, in the said answers to interrogatories above mentioned and hereinafter more particularly referred to. From said icing plants and icing stations said Armour Car Lines sells ice and performs the service of icing and re-icing cars for railroad companies at the points where said plants and stations are located. The extent of such service being the placing by said Armour Car Lines of ice in the bunkers of the cars which is done from the top of the car, the cover of the bunker being removed and without access to the interior or loading space of the cars, the cars being set at the icing plants of the company by the railroads for the purpose thereof and removed therefrom by railroads when such service has been performed. The said service is so performed by said Armour Car Lines for said railroad companies pursuant to arrangements made with the respective railroads on whose lines said plants and stations

are located; and for said service said Armour Car Lines is paid by said railroad companies, pursuant to said arrangements, a stated compensation per car iced or per ton of ice furnished. This compensation is irrespective of the charges made by said railroad companies to shippers for icing and re-icing cars. The railroad companies make their charges direct to shippers for icing and re-icing

cars pursuant to published tariffs filed with the Interstate
274 Commerce Commission, and collect such charges. At one of said points where said Armour Car Lines has an icing plant, to wit: Toledo, Ohio, said Armour Car Lines, in some instances, at the request of certain shippers and at the request of the railroad companies at said point, collects from said shippers direct its icing charges, which charges at said point are identical with the charges for icing made said shippers by the railroad companies and covered by their tariffs, but Armour Car Lines only makes such collections for the convenience of the shippers and railroad companies.

(d) It enters into and performs contracts with various railroads for the furnishing of cars for the shipment of perishable fruits and vegetables and for the icing and re-icing of such cars at certain fixed points from points of origin to the points of destination of shipments transported therein. Said contracts provide in substance that the said Armour Car Lines shall furnish the railroad companies suitable refrigerator cars in such numbers and at such times as may be required to enable the railroad companies to transport all fruits and vegetables which may be offered for shipment; that said Armour Car Lines shall properly ice said cars initially, and re-ice them at regular and fixed icing stations which are located at points designated by the carrier from points of origin to their respective points of destination; that the railroads shall pay to said Armour Car Lines stated rentals for the use of all refrigerator cars so furnished and shall also pay to said Armour Car Lines agreed charges for initially icing and for re-icing said cars as indicated in certain schedules of charges attached to said contracts. The respondent is informed and believes that the contracts herein referred to have been furnished to the Interstate Commerce Commission by the various railroad companies, parties thereto, and that the same are now on file with said Commission.

(e) Said Armour Car Lines neither owns nor controls any motive power or any transportation equipment other than the cars which it furnishes to railroad companies and others as above described.

275 It does not at any time have any control over the movement of said cars when loaded, either in interstate commerce or otherwise. It derives no revenue from said cars or from the use thereof, excepting the rentals paid by railroads and others pursuant to the said arrangements above described. It has no interest, direct or indirect, in the freight and transportation charges made and collected by the railroad companies from shippers for the transportation in said cars of commodities herein described. It does not receive any commissions on freight transported in its cars. It issues no bills of lading for freight contained in such cars and makes no

contracts of shipment or carriage in connection therewith, and goods shipped in such cars are not delivered into its possession, but always into the possession and custody of the respective railroad companies which seal the cars, issue their bills of lading for the freight shipped therein and contracts with the shipper for the transportation thereof, which includes the carriage and refrigeration of the shipment. Except as above described, it has no dealings with shippers.

In respect to the transportation of commodities herein described, the Armour Car Lines is not itself in any sense a shipper, and has no interest in or control over such shipments made in any of said cars which it owns. It does not control the routing of any such shipments, and does not even have access to the contents of any of the cars iced or refrigerated by it. Except as above stated, its dealings are exclusively with the railroad companies to which its cars are furnished, and for which the service of icing and re-icing is performed, and its income is derived principally from the furnishing of its cars to such railroads and others and from the performance of said service of icing and re-icing for said railroads, and also from its other business as herein described.

276 4. The respondent admits that certain provisions of Sections 2, 3, 12, 13 and 15 of the Act to Regulate Commerce are as stated in the petition, but prays leave, for the purpose of this proceeding, to refer generally to the provisions of said act as amended and in this connection refers particularly to the following provisions of Section 1 thereof:

"That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity * * * and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment), from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from one place in a territory to another place in the same territory, or from one place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country. * * *

The term 'common carrier' as used in this Act shall include express companies and sleeping car companies. The term 'railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches,

spurs, tracks, and terminal facilities of every kind used or
277 necessary in the transportation of the persons or property
designated herein, and also all freight depots, yards, and
grounds used or necessary in the transportation or delivery of any
of said property; and the term 'transportation' shall include cars and
other vehicles and all instrumentalities and facilities of shipment
or carriage, irrespective of ownership or of any contract, express or
implied, for the use thereof and all services in connection with the
receipt, delivery, elevation and transfer in transit, ventilation, re-
frigeration or icing, storage, and handling of property transported;
and it shall be the duty of every carrier subject to the provisions of
this Act to provide and furnish such transportation upon reason-
able request therefor; and to establish through routes and just and
reasonable rates applicable thereto; and to provide reasonable facili-
ties for operating such through routes and to make reasonable rules
and regulations with respect to the exchange, interchange and return
of cars used therein, and for the operation of such through routes,
and providing for reasonable compensation to those entitled thereto."

5. The respondent has no knowledge or information as to whether
the Interstate Commerce Commission, as averred in the petition,—
"concluded it was its duty to ascertain whether, through stock
ownership or by some other means to your petitioner unknown, said
Armour & Co., was controlling said Armour Car Lines and using
the same as a device to obtain concessions from the published rates
of transportation on its said shipments from said carriers, or to ob-
tain rates of transportation on its said shipments which were less
than those contemporaneously applied to the transportation of like
shipments of its competitors, or to obtain for itself undue and un-
reasonable advantage which subjected such competitors to undue
and unreasonable prejudice and disadvantage; or whether said
Armour Car Lines was receiving from said common carriers
278 for furnishing refrigerator cars and ice and for performing
refrigeration services, as aforesaid, unreasonable compensa-
tion, which inured to the benefit of said Armour & Co., by reason
of which the provisions of Sections 1, 2, 3 and 15 of said Act, above
quoted, or any of them, had been and were being violated."

And in this connection respondent alleges that said Armour Car
Lines and said Armour & Co. are separate and distinct corporations,
and states that a list of the officers and stockholders of said Armour
Car Lines was furnished to said Commission pursuant to its said
orders; but respondent specifically denies that said Armour Car
Lines has been or is used or controlled by said Armour & Co., or
by any other person or corporation, as a device to obtain concessions
from said carriers from the published rates of transportation on
shipments, or to obtain rates of transportation on shipments which
were or are less than those contemporaneously applied to the trans-
portation of like shipments of competitors, or to obtain any undue
and unreasonable advantage which subjected competitors to undue
and unreasonable prejudice or disadvantage, or that said Armour
Car Lines has at any time received, or does receive, from any com-
mon carrier for furnishing refrigerator cars or ice or for performing

refrigeration service, unreasonable compensation which has at any time inured, or does inure to the benefit of said Armour & Co., or of any other person or corporation, as referred to in the petition and respondent further alleges on information and belief that the services performed for and the ice sold to the various railroads by said Armour Car Lines, together with the compensation received by said

Armour Car Lines from such railroads respectively for such
279 services and ice and cars furnished, have been fully reported by said railroads, respectively, to the Interstate Commerce Commission; and respondent further alleges that said Armour Car Lines has been at all times, and is now, ready and willing to furnish to said Commission full information concerning its contracts or arrangements with common carriers by railroad under which it furnishes and rents its said cars, sells ice, and its services in icing and re-icing cars at designated points to said common carriers, subject to the Act to Regulate Commerce; the nature of the service performed by it under such contracts or arrangements, the rate of compensation it receives from such carriers for its said cars, ice sold and services performed thereunder and the amounts of compensation so received from said carriers, respectively, therefor; and that said Armour Car Lines has furnished all of such information pursuant to the orders and the requests of the Commission in this proceeding, when such requests for information have not been inseparably coupled with demands for other information to which it believes the Commission is not entitled in this proceeding.

6. Respondent admits that the Interstate Commerce Commission made and caused to be served upon said Armour & Co. and upon said Armour Car Lines the orders set forth in the petition and dated respectively, June 5th, 1912, October 8th, 1912, and September 15th, 1913; but the respondent denies that by virtue of said orders or any of the same or by virtue of any provision of law the said Interstate Commerce Commission acquired or has any jurisdiction, power or authority over said Armour Car Lines or over this respondent with respect to any of the matters set forth in the
petition. The respondent alleges that said Armour Car Lines

280 is not a common carrier within the scope and meaning of the said Act to Regulate Commerce and acts amendatory thereof and supplemental thereto; and has never held itself out to be such; and further alleges that said Armour Car Lines is not engaged in transportation within the scope and meaning of said Act and acts amendatory thereof and supplemental thereto. He alleges that the true intent, meaning and purpose of said Act as amended, is to include within its operation and place under the jurisdiction of said Interstate Commerce Commission common carriers by railroad and other common carriers such as express companies and sleeping car companies specifically named in said Act; that the so-called private car lines performing such services as hereinabove described with respect to said Armour Car Lines were in fact expressly and intentionally omitted from the provisions of said Act and that common carriers by railroad and other common carriers engaged in the actual transportation of property were made by

said Act responsible for the furnishing of all facilities directly connected therewith, including refrigerator, tank, box and stock cars and said service of icing and refrigeration. Respondent further alleges that although the said Act to Regulate Commerce has been in substantially the same form for more than seven years, so far as all matters involved in this proceeding are concerned, and although the business of private car line companies generally, as well as that of Armour Car Lines, has been carried on in substantially the same manner during all of said time, the said Interstate Commerce Commission has not prior to the institution of this investigation, so far as respondent is informed and believes, undertaken to assert any jurisdiction, power or authority over such
281 companies, or treat them as falling within the scope and operation of said Act.

7. Respondent alleges that said Armour Car Lines has at all times denied that said Interstate Commerce Commission had or has any jurisdiction, power or authority over it for the purpose of inquiring into its private business and affairs, but that notwithstanding said want of jurisdiction, power and authority, said Armour Car Lines has been at all times ready and willing to furnish to said Commission such information as said Commission might reasonably require, and as said Armour Car Lines might properly furnish without prejudice to its business. On or about February 27, 1913, the said Commission, acting pursuant to the first two of said orders above mentioned, formulated and propounded certain inquiries addressed to private car line companies and requested that said Armour Car Lines furnish answers thereto. A copy of said questions is hereto attached, marked "Exhibit A" and made a part hereof.

Said Armour Car Lines, in response to said questions, furnished full and complete answers to said Commission to question- numbered 1, 2, 3, 4, 5, 6, and 7. In reply to question No. 8 in said Exhibit "A," said Armour Car Lines furnished all of the data required by Table "A" in Form 5 attached to said exhibit, and all of the data required by Table "B" in said form 5 excepting the yearly output of each icing plant, which includes not only ice sold to railroads but also to private parties, not common carriers, subject to the Act to Regulate Commerce, and the cost to Armour Car Lines of the performance of said service. In response to question No. 9 in said Exhibit "A" said Armour Car Lines furnished all of the information called for in said question save and excepting
282 copies of its income, profit and loss and balance sheet statements for its last fiscal year therein referred to. In response to question No. 10, said Armour Car Lines furnished the data called for by form No. 6 attached to said Exhibit "A" for the years 1910, 1911 and 1912. In and by said orders of the said Commission as hereinabove mentioned, it was provided that this inquiry should relate to the practices of carriers by railroads with respect to three separate and distinct matters, to wit: (1st) the allowances paid by carriers for the use of private cars; (2nd) the practices governing the handling and icing of such cars, and (3rd) the minimum carload weights applicable to commodities shipped in such cars.

Pursuant to such orders and in and by its answers above mentioned, Armour Car Lines has furnished the Interstate Commerce Commission all the information which it believes bears upon said inquiry and is responsive to the questions asked thereunder, and also is willing to furnish to the Interstate Commerce Commission if desired, the information stated in paragraph 5 of this petition; but respondent denies that either under the Act of Congress or such orders, the Commission has the right to inquire into the cost to Armour Car Lines of acquiring cars or of furnishing any such service, or the profits which accrue to Armour Car Lines from the sale of, such service, whether to a common carrier by railroad or otherwise. Respondent prays leave to lay before the court and refer to said answers of said Armour Car Lines to the questions propounded by said Commission, with the same force and effect as if said answers were attached to this answer and made a part hereof.

On or about the 9th day of August, 1913, said Armour
283 Car Lines received the following communication from said Interstate Commerce Commission:

"August 7, 1913.

Docket No. 4906.

In the Matter of Private Cars.

Armour Car Lines, Mr. F. W. Ellis, Vice-Pres't & Gen'l M'gr, Union Stock Yards, Chicago, Ill.

GENTLEMEN: This will acknowledge receipt of registered package No. 541,829, from Chicago, Ill., containing statement showing certain information with respect to icing plants and icing stations, which statement has been filed with the report of your company in the above entitled investigation.

Your attention is respectfully directed to the fact, however, that all the information required by the Commission in this proceeding has not yet been furnished. In letter of May 23, 1913 (to which no reply has as yet been received), you were requested to furnish copies of your income, profit and loss, and balance sheet statements for your last fiscal year, as called for by question 9 of the Commission's blank form of report. It was also pointed out in the letter referred to that on Form No. 6, in answer to question 10, a summary of operations for three years only was given, while the question and form contemplates a statement of operations for each year since the organization of your company, March 11, 1901.

In order that no misunderstanding may exist as to what further information the Commission desires and will require, you are requested to furnish without delay:

1. An income statement, showing in detail the credits to income from all sources and the debits to income of whatever nature, and the total credits and total debits, as shown by the book- and records of the Armour Car Lines, as a corporation, for its last fiscal year.

2. A statement showing in detail all credits and all debits to

profit and loss, and the total credits and total debits, as shown
284 by the books and records of the Armour Car Lines,
as a corporation, for its last fiscal year.

3. A statement showing the amount invested in each icing plant or icing station owned wholly or in part by the Armour Car Lines at the end of its last fiscal year.

4. A statement showing separately and in detail the results for the last fiscal year from the operation of each icing plant or icing station operated by the Armour Car Lines. This statement should show—

The amount invested in each plant or icing station;

The point or points at which the supply of ice was obtained for each station;

The cost per ton at the source of supply;

The freight rate per ton, if transported by rail, from point of supply to storage house;

The cost per ton of labor, and other expenses incident to storing;

The total cost per ton placed in storage plants;

The total cost per ton placed in bunkers or tanks or refrigerator cars;

Statement should also show the number of tons stored at each house during each year; the number of tons sold or otherwise disposed of; actual or estimated loss in tons, from meltage; total receipts and total disbursements, in dollars and cents for each station, and the profit or loss from operation, together with such other information as in your judgment may be pertinent. The statement should cover salt as well as ice.

5. A statement showing the credits to income and the debits to income during last fiscal year from each and every plant or icing station owned solely or in part or operated by the Armour Car Lines.

6. A copy of balance sheet (trial balance) at the end of last fiscal year before accounts were closed.

7. A copy of balance sheet (trial balance) at end of last fiscal year after books were closed.

8. A statement as per Form No. 6 of the Commission's blank, showing summary of operation of the Armour Car Lines
285 for each year since the date of its organization to the close of its last fiscal year.

In the event your company is not in position to compile and furnish promptly the information and data as outlined above, on account of lack of clerical force, or for other reason, the Commission will be pleased to send one or more of its representatives to your office at Chicago for the purpose of compiling or assist in the compilation of such data as it may desire, from the original records of your company.

You are requested to reply immediately to this communication and to advise what may be expected from the Armour Car Lines in regard to the requests contained herein.

Yours very truly,
(Signed)

C. C. McCHORD,
Commissioner."

Said Armour Car Lines, through its General Counsel, made the following reply to said communication:

"August 18, 1913.

Hon. C. C. McChord, Interstate Commerce Commissioner, Washington, D. C.

DEAR SIR: Replying to your recent request for detailed information concerning the business of the Armour Car Lines. We are quite willing to appear before the Commission in response to any order made by it based upon a complaint regularly filed or by the Commission on its own motion, touching any specific matter concerning our business if within the jurisdiction of the Commission, but we must respectfully decline to go further on your request for voluntary information touching things over which we contend your commission has no jurisdiction.

A. R. URION,
General Counsel Armour Car Lines."

286 During the month of October, 1913, the following correspondence between said Armour Car Lines and said Commission took place:

"October 1, 1913.

Mr. Alfred R. Urion, General Counsel Armour Car Lines, Home Insurance Building, 137 South La Salle Street, Chicago, Ill.

DEAR SIR: Please refer to your telegram of August 18th and confirmatory letter of same date, on behalf of the Armour Car Lines, declining to furnish the detailed information with respect to cars and icing stations owned or operated by your company, such information having been several times asked for by this Commission and finally requested in detail in letter of August 7th to Mr. F. W. Ellis, Vice-President and General Manager.

Attached hereto is copy of order of September 15th, service of which was made upon Armour & Company and the Armour Car Lines by registered mail.

As the interests represented by you are now parties respondent to the pending investigation, this is to request that the information asked for in my letter of August 7th be furnished to the Commission with the least possible delay. I shall appreciate immediate advice of the position taken by the Armour Car Lines respecting this request.

Your- very truly,
(Signed)

C. C. McCHORD,
Commissioner."

"October 13, 1913.

Hon. C. C. McChord, Interstate Commerce Commissioner, Washington, D. C.

287 DEAR SIR: I desire to acknowledge receipt of your letter of October 1st and express my regret that it has not been answered before owing to its being held awaiting my return to the office. I have attentively considered your letter but
9-712

with all due respect, I must submit that the order of September 15th does not, in my view, change the situation as far as the Armour Car Lines is concerned, and I am constrained to adhere to the position set forth in my telegram addressed to you under date of August 8th, 1913, and the confirmatory letter of the same date for the reasons stated in said telegram and confirmation thereof.

Yours very truly,
(Signed)

ALFRED R. URION,
General Counsel Armour Car Lines."

8. The respondent has never been made a party to this proceeding and is informed and believes that save and except for the three orders set forth in the petition herein no order or orders of any nature have even been served upon said Armour Car Lines or said Armour & Company in said proceeding. Respondent specifically denies that by the virtue of the orders or any of the same the said Commission acquired any jurisdiction, power or authority over the respondent or said Armour Car Lines or to require the furnishing of any of the information involved in this proceeding.

9. The respondent admits that on January 22, 1914, at a special hearing presided over by one of the members of said Commission, in the City of Chicago and State of Illinois, the respondent, appearing in response to a subpoena, was duly sworn and testified; and admits that in the course of his said examination by the attorney representing said Commission he was asked the questions set forth on pages 15 to 31, inclusive, of the petition herein, and that upon the 288 advice of his counsel he declined to answer each and every one of said questions. He denies that the said questions or any of the same are relevant or material to the matter under investigation by the said Commission, or that responses to said questions or any of the same are necessary or proper to enable the said Commission to perform the functions for which it was created or to discharge any duty or to execute or enforce any provision or provisions of said Act to Regulate Commerce, or to inform said Commission as to the manner or method in which the business of any common carrier subject to the jurisdiction of said Commission is conducted; respondent alleges, on the contrary, that the information called for by said questions and by each of the same is irrelevant and immaterial and wholly foreign to said matter under investigation. He further alleges that the said information called for by said questions and by each of the same is irrelevant and immaterial to any investigation or inquiry which said Commission is authorized or empowered to undertake or is undertaking, either as alleged in the petition herein, or otherwise.

Wherefore, respondent respectfully prays that said petition be denied.

FREDERICK W. ELLIS, *Respondent.*

289 COUNTY OF COOK,
State of Illinois, ss:

I, Frederick W. Ellis, on oath, depose and say that I am the respondent above named, that I have read the foregoing answer, know the contents thereof and that the same is true except as to matters therein stated on information and belief, and as to such matters, that I believe them to be true.

FREDERICK W. ELLIS.

Subscribed and sworn to before me, a Notary Public within and for said County and State, this 10th day of February, A. D. 1914.

[SEAL.]

T. F. PARKER,

Notary Public.

My commission expires July 2, 1917.

FRANK B. KELLOGG,
CORDENIO A. SEVERANCE,
ROBERT E. OLDS,
ALFRED R. URION,
C. J. FAULKNER, JR.,
Attorneys for Respondent.

290

"EXHIBIT A."

Interstate Commerce Commission.

WASHINGTON, February 27, 1913.

Docket No. 4906.

In the Matter of Private Cars.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of June, 1912, the following order in the above-entitled cause was issued and served on carriers by railroad subject to the act to regulate commerce:

It appearing from complaint now on file with the Commission that the allowances paid by carriers subject to the act to regulate commerce for the use of private cars, the practices governing the handling and icing of such cars, and the minimum carload weights applicable to the commodities shipped therein, are unjust, unreasonable, unduly discriminatory and otherwise in violation of the act to regulate commerce and the acts amendatory thereof or supplementary thereto:

It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by this Commission on its own motion into and concerning the practices of all carriers by railroad subject to the act to determine whether such allowances, practices, or minimum carload weights are unjust, unreasonable, or unduly discriminatory or otherwise in violation of said act with a view to the issu-

ance of such order or orders as may be necessary to correct discriminations and to make applicable reasonable weights.

On October 8, 1912, a supplemental order, in the following form, was issued:

It appearing that there is much complaint from growers of fruits and vegetables and dealers in fish shipping these articles from points on the line of the Atlantic Coast Line Railroad Company in North Carolina topoints north and east, on its own line and connections, such as Washington, D. C., Baltimore, Md., Philadelphia, Harrisburg, and Pittsburgh, Pa., New York, Albany, and Buffalo, N. Y., Providence, R. I., and Boston, Mass., that the said carriers constantly fail to furnish an adequate and prompt supply of refrigerator cars suitable for the transportation in question, and likewise fail to perform said transportation with reasonable expedition, by reason of which inadequacies in equipment and service the shippers of these commodities as aforesaid are subjected to substantial and irreparable damage:

It is ordered, That a hearing or hearings be had with respect to the above-stated matters, in connection with the general investigation now under way before the Commission in the proceeding entitled "In the Matter of Private Cars," at such times and places as the Commission may hereafter designate.

It is the intention of the Commission in its investigation "In the Matter of Private Cars" to hold public hearings at convenient points throughout the United States and to give to the carriers, the owners of private cars, shippers making use of privately owned equipment, and other interested parties an opportunity to be heard.

Preliminary to such hearings, in order to facilitate the investigation and to avoid, if possible, the issuance of subpoenas, you are requested to furnish the Commission, in the manner outlined in the accompanying forms, answers to the questions herein propounded.

The forms have been prepared primarily for the purpose of indicating the detail in which certain of the answers are desired. The printed sheets may be used or the answers may be prepared entirely on blank paper with typewriter or otherwise.

291 Two sets of the questions and accompanying forms are sent you, together with extra sets of the forms to be used if necessary. It is desired that one copy be filled out by you and returned flat (not folded) to the Commission not later than March 31, 1913. Envelope should bear note: "In the Matter of Private Cars."

By the Commission.

[SEAL.]

JOHN H. MARBLE, *Secretary*.

1. Give the exact name of respondent:

- (a) Name
(b) State whether an individual, company, firm, or corporation

2. If a corporation, give the following information:

- (a) Date of organization
(b) Reference to State or Territorial laws under which organized

(c) Names, titles, and addresses of general officers and directors:

[illegible]

292 (d) If car line is separately incorporated, give—

1. Date of last closing of stock books.....
2. Total number of stockholders as of above date.....
3. Total number of shares of stock outstanding as of above date
4. Names and addresses of 12 largest stockholders and number of shares owned by each:

[illegible]

(e) If any of above stock held by an individual, association, or corporation as trustee, give—

1. Name and address of trustee or trustees
2. Name and address of beneficiary or beneficiaries for whom trust was maintained
3. Give, as indicated in Form No. 1, information pertaining to equipment owned, or operated under lease or other arrangement, on January 1, 1913, stating the kind of cars, the numbers or series of numbers of such cars, the number of cars owned or operated of each series, the capacity per car, the date of construction, purchase or

lease, the cost per car, the cost of maintenance per car per 100 miles run, and the amount (if any) per car charged off during your last fiscal year for depreciation and rate or basis for charging depreciation.

293 In Table A should be reported all cars owned and operated by respondent.

In Table B should be reported all cars owned but not operated by respondent. This will include all cars leased to railroads, individuals, or concerns, as well as cars not in service account retired, in storage, etc., for a period of six months or more.

In Table C should be reported all cars operated but not owned by respondent. This will include all cars owned by others than respondent and operated under lease or other arrangement.

On the bottom line of Form No. 1 should be shown the total number of cars operated by respondent. This will be the sum of A, "Cars owned and operated," and C, "Cars operated under lease, etc."

4. Give, as indicated in Form No. 2, the receipts from or in connection with equipment owned or operated by your company and used under lease, contract, published tariff, or otherwise during your last fiscal year, the amount received from each railroad or from shippers or others directly or through the railroads, and the bases for such allowances (whether per car, day, month, or percentage of freight revenue, etc.). This statement should show the total earnings received from or in connection with the operation of equipment as set forth above, and should include all receipts except receipts for mileage (see question 5). Such receipts should be classified to show separately the amounts received from railroads as commissions (if any) for soliciting or developing freight traffic, and such further classification as may be practicable.

5. Give, as indicated in Form No. 3, the mileage, loaded and empty, made by equipment operated by respondent over each of the railroads in the United States over which such equipment moved during your last fiscal year, showing separately the mileage for which respondent received pay from carriers, with rate and amount; the mileage for which respondent paid carriers, with rate and amount; and the mileage for which no charge or payment was made by either the carriers or respondent. The information should be given separately for each kind of cars.

6. Give, as indicated in Form No. 4, for your last fiscal year, in groups of 25 cars consecutively numbered, the mileage and earnings per car of—

Used or assigned exclusively, primarily, or chiefly for the transportation of—

25 refrigerator cars.....	Fresh meat and (or) packing-house products.
25 refrigerator cars.....	Dairy products.
25 refrigerator cars.....	Brewery products.
25 refrigerator cars.....	Fruit and (or) vegetables.
25 refrigerator cars.....	Other commodities.
25 tank cars.....	Petroleum and its products.

Used or assigned exclusively, primarily, or chiefly for the transportation of—

25 tank cars.....	Other commodities.
25 coal cars.....	Coal.
25 coal cars.....	Other commodities.
25 coke cars.....	Coke.
25 coke cars.....	Other commodities.
25 poultry cars.....	Live poultry.
25 poultry cars.....	Other commodities.

It is realized that there are perhaps few cars of any particular kind used exclusively in the transportation of any one commodity. The particular commodity subhead under which the continuous movement or record of the cars during the year is reported should be determined by the nature of the commodity to the transportation of which the cars were primarily assigned, even though, during the year, they may have been used in the transportation of other commodities.

7. Do you own or are you interested, directly or indirectly, in any icing plant or station at which shipments moving under refrigeration, either in cars operated by you, by other private car lines, or by the railroads, are iced?.....

8. In case the question next above is answered in the affirmative, then give in form the same or similar to that shown in Table No. 5 herewith the name or names under which such icing plants or stations are operated, their location, and state fully as to each of such plants or stations the nature and extent of your interest therein; also show the number of tons of ice furnished each of the railroads at each icing plant or station for refrigeration or other purposes and the price per ton charged for ice furnished each railroad during your last fiscal year. Also state the total output of ice (in tons) for each plant during the same period, and if any ice furnished railroads for refrigeration or other purposes was purchased by you state the price per ton paid at point of distribution and the price per ton charged railroads therefor.

9. Furnish copies of your income, profit and loss, and balance sheet statements for your last fiscal year. In case the items shown below do not appear in the copies of statements submitted, the following additional data should be given:

Credits to income:

- (a) Commissions and other allowances or proportions of freight revenue received from railroads for soliciting or developing freight traffic or for any other service performed by the respondent in the handling of such traffic (not to include car rental or mileage):
- (b) Rental or other charges (not including mileage) assessed against or collected from or through railroads for use of equipment.....
- (c) Rental or other charges assessed against or collected directly from shippers for use of equipment.....

- (d) Amount assessed against or collected from railroads for mileage.....
- (e) Receipts from operation of icing plants or stations..

Debits to income:

- (a) Maintenance of equipment.....
- (b) Depreciation of equipment.....
- (c) Payments to railroads for hauling equipment....
- (d) Salaries and expenses of officers and employees, and office and other expenses incurred in connection with the operation of equipment:
Total salaries and expenses..... \$
Less: Proportion (if any) contributed by railroads

Net

- (e) Expenditures in operation of icing plants or stations

Disposition of net income:

- (a) Dividends declared.....
- (b) Other disposition (give details)

NOTE.—The purpose of question 9 is to ascertain the results obtained from the operation of private (freight) cars. In case respondent is engaged primarily in a manufacturing or other business and the operation of freight cars is merely incidental thereto the copies of statements called for need not be furnished, but the information with respect to the several items shown above should be given if possible.

10. Furnish, as outlined on Form No. 6, a statement showing summary of the operation of private cars (not to include icing plants or stations) for each of your fiscal years from the date of organization up to and including your last fiscal year.

.....
(Name of respondent).....
.....
(Name and title of officer making this return).....
.....

(Here follow Forms Nos. 1 to 6, marked pages 295 to 300.)

Name

Kind of cars (refrigerator, tank, stock, etc.).	Numbers or series
Total cars owned and operated	
Total cars owned and not operated	
Total cars owned	
Total cars operated under lease, etc.	
Total cars operated (leased and owned)	

Form No. 1.

[Answer to question 3.]

Name of respondent

STATEMENT PERTAINING TO EQUIPMENT OWNED OR OPERATED ON JANUARY 1, 1913.

A. CARS OWNED AND OPERATED BY RESPONDENT.

	Number of cars owned or operated of each series.	Capacity per car (in pounds or gallons, etc.).	Year in which constructed, purchased, or leased.	Cost per car of each number or series.	Cost of maintenance per car per 100 miles run for each number or series during the year ending 191....	Depreciation (if any) charged off during the year ending 191....		Name and address of lessor or lessee.
						Rate or basis.	Amount per car for each number or series.	

B. CARS OWNED BUT NOT OPERATED BY RESPONDENT.

C. CARS OPERATED UNDER LEASE, ETC.

				(Leave blank.)				

[Answer to question 4.]

Name of respondent

[illegible]

[Answer to question 4.]

Name of respondent

RECEIPTS FOR OR IN CONNECTION WITH EQUIPMENT LEASED, ETC., DURING THE YEAR ENDING, 191....

Funds received from (or through) each road, or from shippers or others direct.			Authority for collection, whether contract, lease, or tariff, etc.	Rate or basis for computing charge.
For soliciting shipping freight	Other receipts (except mileage).			

[Answer to question 5.]

Name of respondent

STATEMENT OF RECEIPTS AND PAYMENTS ON MILEAGE BASIS FOR CARS HAULED BY CARRIER
(Kind of cars.)

Names of railroads	Mileage for which railroads paid private car line.					Mileage for wh	
	Landed.	Empty.	Total.	Rate.	Amount.	Landed.	Empty.
Total							

[Answer to question 5.]

Name of respondent

1. LEASE BASIS FOR CARS HAULED BY CARRIERS DURING THE YEAR ENDING, 191...

[illegible]

Name of respondent.....

STATEMENT SHOWING PERFORMANCE OF TWENTY-FIVE CARS USED IN THE TRANSPORTATION OF
(Kind of cars.) (Name of commodity)

[illegible]

Form No. 1.

[Answer to question 8.]

Name of respondent.....

DATA WITH RESPECT TO ICING PLANTS AND ICING STATIONS.**A.—LOCATION OF ICING PLANTS OR STATIONS AND EXTENT OF INTEREST IN EACH.**

Names under which icing plants or stations are operated.	City or town.	State.	On tracks of railroad or railroads.	

B.—ICE FURNISHED BY EACH PLANT OR STATION DURING THE YEAR ENDING....., 191...

Names of plants or stations.	Number of tons furnished.	Names of railroads to which furnished.	Price paid per ton (If purchased).*	Price charged per ton.*

Form No. 4.

[Answer to question 8.]

Name of respondent.....

DATA WITH RESPECT TO ICING PLANTS AND ICING STATIONS.

A.—LOCATION OF ICING PLANTS OR STATIONS AND EXTENT OF INTEREST IN EACH.

City or town.	State.	On tracks of railroad or railroads.	Nature and extent of interest.

B.—ICE FURNISHED BY EACH PLANT OR STATION DURING THE YEAR ENDING....., 191...

Furnished.	Names of railroads to which furnished.	Price paid per ton (if purchased).*	Price charged per ton.*	Date for which price is shown.	Yearly output of icing plant. (Tons of ice.)

* In case the price of ice varied during the year give in detail the various prices paid and charged and the date for which each price is shown.

[Answer to question 10.]

STATEMENT SHOWING SUMMARY OF OPERATION OF PRIVATE CARS FOR EACH FISCAL YEAR FROM
(Date of organization)

* By "equivalent" as here used is meant anything other than money, and the amounts reported should be the actual money value of the consideration at the time of the transaction. No discount is to be taken for depreciation. These columns are for use of separately incorporated car lines. Industrial or other concerns operating private cars in connection with or incidental to manufacturing or other business need not report.

FISCAL YEAR FROM **TO**
 (Date of organization.) (End of last fiscal year.)

[illegible]

ation at the time of the transaction. No discount on securities should be included.
 tal to manufacturing or other business need not report as to securities disposed of or dividends declared.

300 (Endorsed:) Filed Feb. 11, 1914. T. C. MacMillan, Clerk.

301 And afterwards to-wit: on the sixteenth day of November, 1914, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

302 In the District Court of the United States, Northern District of Illinois, Eastern Division.

November 16, 1914.

Present: Hon. Kenesaw M. Landis, Judge.

INTERSTATE COMMERCE COMMISSION, Petitioner,

vs.

FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent Frederick W. Ellis to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Order and Decree.

The Interstate Commerce Commission having duly filed a petition to the Judges of the District Court of the United States for the Northern District of Illinois for an order or orders requiring the above named respondent Frederick W. Ellis to appear before said Commission at a time and place to be fixed by said Commission and to make full answer to the questions theretofore refused to be answered by said Frederick W. Ellis as set forth at length in said petition, and to any and all pertinent questions relating to the subject matter set forth in said petition which said Commission might require him to answer, and requiring the production by said Frederick W. Ellis of the documentary evidence covered by said questions, and any and all other pertinent documentary evidence relating to said subject matter which said Commission might require him to furnish;

And an order having been duly made by the Honorable Kenesaw M. Landis, Judge of said Court, on motion of James H. Wilkerson, United States Attorney for the Northern District of Illinois, upon said petition requiring said respondent to appear before said District

303 Court of the United States for the Northern District of Illinois, at a session of said court to be held in the Post Office Building in the City of Chicago and State of Illinois on the 12th day of February, 1914, and then and there to show cause why said petition should not be granted; and the Interstate Commerce Commission having thereafter duly excepted to certain allegations in paragraph 5 of the answer of the respondent herein as follows, to-wit:

"And in this connection respondent alleges that said Armour Car

Lines and said Armour & Co. are separate and distinct corporations, and states that a list of the officers and stockholders of said Armour Car Lines was furnished to said Commission pursuant to its said orders; but respondent specifically denies that said Armour Car Lines has been or is used or controlled by said Armour & Co., or by any other person or corporation, as a device to obtain concessions from said carriers from the published rates of transportation on shipments, or to obtain rates of transportation on shipments which were or are less than those contemporaneously applied to the transportation of like shipments of competitors, or to obtain any undue and unreasonable advantage which subjected competitors to undue and unreasonable prejudice or disadvantage, or that said Armour Car Lines has at any time received or does receive, from any common carrier for furnishing refrigerator cars or ice or for performing refrigeration service, unreasonable compensation which has at any time inured, or does inure to the benefit of said Armour & Co., or of any other person or corporation, as referred to in the petition, and respondent further alleges on information and belief that the services performed for and ice sold to the various railroads by said Armour Car Lines, together with the compensation received by said Armour Car Lines from such railroads respectively for such services and ice and cars furnished, have been fully reported by said railroads respectively to the Interstate Commerce Commission."

and said Interstate Commerce Commission having moved to strike the said allegations from the answer of the respondent on the ground that the same were not responsive to the averments of the petition and were immaterial and stated matters not competent to be proved by the respondent in answer to the petition;

And the said Frederick W. Ellis having duly made answer to said petition and having duly filed his objections to striking out the said allegations in paragraph 5 of the answer and having appeared by counsel at the time and place aforesaid in opposition to the granting of said petition and of said motion to strike out, and the questions involved in said petition and said motion having been fully argued by counsel for the respective parties, and the court having been fully advised in the premises;

304 Now on reading and filing said petition, the answer thereto, and the record of the proceedings before the said Interstate Commerce Commission;

It is ordered, adjudged and decreed, That the said respondent, Frederick W. Ellis, be and he is hereby directed to appear before the Interstate Commerce Commission upon due notice by said Commission, at a time and place to be designated therein, and make full, true and complete answer and response to the following questions and directions and each and all of them heretofore propounded at a session held by the Interstate Commerce Commission at the City of Chicago on the 22nd day of January, 1914, and refused to be answered by said respondent at said hearing, and to produce the documentary evidence covered by said questions and directions respectively as follows:

1. Mr. BOYLE: What position does he hold with Armour & Company?

(Said question being the question set forth on page 15 of the petition herein.)

2. Mr. BOYLE: What position does Mr. J. Ogden Armour hold with Armour & Company, or what is his connection with Armour & Company.

(Said question being the question set forth on pages 15 and 16 of the petition herein.)

3. Mr. BOYLE: Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relations with or to Armour & Company?

(Said question being the question set forth on page 16 of the petition herein.)

4. Mr. BOYLE: How was title to the cars held by Armour & Company and by Armour Packing Company passed to Armour Car Lines?

(Said question being the question set forth on page 16 of the petition herein.)

5. Mr. BOYLE: How were the cars of Armour Car Lines, the corporation that began in March, 1901, acquired?

(Said question being the question set forth on page 16 of the petition herein.)

6. Mr. BOYLE: I understand then that Armour Car Lines is unwilling to state under what circumstances or conditions it acquired the equipment with which it does business?

(Said question being the question set forth on pages 16 and 17 of the petition herein.)

305 7. Mr. BOYLE: Who are the officers of the Fowler Packing Company?

(Said question being the question set forth on page 17 of the petition herein.)

8. Mr. BOYLE: Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Company for furnishing cars at different points, called for by any contract that exists?

(Said question being the question set forth on pages 17 and 18 of the petition herein.)

9. Mr. BOYLE: What is the nature of the understanding?

(Said question being the question set forth on pages 18 and 19 of the petition herein.)

10. Mr. BOYLE: In the next column, Mr. Ellis, under the head of other property appears nothing at all. Did Armour Car Lines own any property other than their rolling stock?

(Said question being the question set forth on pages 19 and 20 of the petition herein.)

11. Mr. BOYLE: Where are the cars of Armour Car Lines repaired when not repaired in shops of railroads?

(Said question being the question set forth on page 20 of the petition herein.)

12. Mr. BOYLE: With who- is settlement made, or by whom is

settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Company?

(Said question being the question set forth on pages 20 and 21 of the petition herein.)

13. Mr. BOYLE: Is that for all ice furnished Armour & Company or just in certain instances that you so bill direct?

(Said question being the question set forth on pages 21 and 22 of the petition herein.)

14. Mr. BOYLE: Do Armour Car Lines manufacture all of their own equipment?

(Said question being the question set forth on page 22 of the petition herein.)

15. Mr. BOYLE: Mr. Ellis, the Armour Car Lines were asked by the Interstate Commerce Commission to furnish, and I quote now from the written request, "an income statement showing in detail the credits to income from all sources, and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year."

I now ask you for the same statement with this modification, that the Commission desires an income statement showing in detail the credits to income, and the debits to income of whatever nature, and the total credits and total debits as shown by the books of the Armour Car Lines, as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation, as that term is defined in section 1 of the act to regulate commerce. I ask you if such a statement will be furnished?

(Said question being the question set forth on pages 22 and 23 of the petition herein.)

16. Mr. BOYLE: Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines?

(Said question being the question set forth on pages 23 and 24 of the petition herein.)

17. Mr. BOYLE: Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business?

(Said question being the question set forth on page 24 of the petition herein.)

18. Mr. BOYLE: What is done with the cars manufactured by Armour Car Lines?

(Said question being the question set forth on page 24 of the petition herein.)

19. Mr. BOYLE: Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines?

(Said question being the question set forth on page 24 of the petition herein.)

20. Mr. BOYLE: Will you furnish an income statement showing in detail the credits to income and the debits to income of whatever

nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting and leasing cars, and furnishing icing and refrigeration service?

(Said question being the question set forth on page 25 of the petition herein.)

307 21. Mr. BOYLE: Please furnish a statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting and leasing cars, and furnishing icing and refrigeration service.

(Said question being the question set forth on pages 25 and 26 of the petition herein.)

22. Mr. BOYLE: Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the end of its last fiscal year, and by icing station is meant station at which icing and refrigeration is done.

(Said question being the question set forth on pages 26 and 27 of the petition herein.)

23. Mr. BOYLE: Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by rail, from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.

(Said question being the question set forth on pages 27 and 28 of the petition herein.)

24. Mr. BOYLE: Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines?

308 (Said question being the question set forth on page 28 of the petition herein.)

25. Mr. BOYLE: Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed?

(Said question being the question set forth on page 28 of the petition herein.)

26. Mr. BOYLE: Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour Car Lines for the last fiscal year after the books were closed; those two requests being made separately.

(Said question being the question set forth on pages 28 and 29 of the petition herein.)

27. Mr. BOYLE: The question referred to asked for information from the date of incorporation of Armour Car Lines. I ask you now if you will give us information to the extent that you have already given it for those three years, to cover the period from the date of incorporation of Armour Car Lines.

(Said question being the question set forth on pages 29 and 30 of the petition herein.)

28. Mr. BOYLE: Mr. Ellis, why did Armour Car Lines report the last three years and not any further? Why did they stop at 1910. (?)

(Said question being the question set forth on pages 30 and 31 of the petition herein.)
and it is further

Ordered, adjudged and decreed, That the said motion of the Interstate Commerce Commission to strike from the answer herein the allegations in paragraph 5 hereof above set forth be, and the same is hereby granted, and said allegations be, and they are hereby, stricken from said answer.

KENESAW M. LANDIS,
United States District Judge.

309 And on to-wit: the sixteenth day of November, 1914, came the defendant in said entitled cause by his attorneys and filed in the Clerk's office of said Court his certain Petition for Appeal and Assignment of Errors. Which said *said* Petition for Appeal and Assignment of Errors are respectively in words and figures following to-wit:

310 *Petition for Appeal.*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above Named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Petition for Appeal.

Now comes the above named respondent, Frederick W. Ellis, by his attorneys, and prays for the allowance of an appeal herein to

the Supreme Court of the United States from the final order or decree of this court herein entered the 16 day of Nov. 1914, and from each and every part thereof; and that a transcript of the record, proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to said Supreme Court of the United States; and that said appeal operate as a supersedeas; and that the amount of security which said Ellis shall give and furnish on said appeal may be fixed; and that all further proceedings under said final order and decree be suspended and stayed pending said appeal.

Dated — —, 1914.

FRANK B. KELLOGG,
CORDENIO A. SEVERANCE,
ROBERT E. OLDS,
ALFRED R. URION,
C. J. FAULKNER, JR.,
Attorneys for Frederick W. Ellis.

(Endorsed:) Filed Nov. 16, 1914. T. C. MacMillan, clerk.

311

Assignment of Error.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.

FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above Named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Assignments of Error.

Now comes the above named respondent, Frederick W. Ellis, by Frank B. Kellogg, Cordenio A. Severance, Robert E. Olds, Alfred R. Urion and C. J. Faulkner, Jr., his attorneys, and files the following assignments of error, upon which he will rely upon his appeal from the order and decree made by this Court on the 16 day of Nov. 1914, in the above entitled proceeding:

1. The Court erred in ordering and directing the said Frederick W. Ellis to appear before said Interstate Commerce Commission and to answer the questions and produce the documentary evidence which in and by said order and decree he is directed to answer and produce.

2. As to each and every of the questions which said Frederick W. Ellis is in and by said order and decree directed to answer and comply with, the Court erred in ordering and directing him to answer the same and produce the evidence therein called for.

3. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 1 in said order and decree and is as follows: What position does he hold with Armour & Company?

4. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 2 in said order and decree and is as follows: What position does M. J. Ogden Armour hold with Armour & Company, or what is his connection with Armour & Company?

312 5. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 3 in said order and decree and is as follows: Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relations with or to Armour & Company?

6. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 4 in said order and decree and is as follows: How was title to the cars held by Armour & Company and by Armour Packing Company passed to Armour Car Lines?

7. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 5 in said order and decree and is as follows: How were the cars of Armour Car Lines, the corporation that began in March, 1901, acquired?

8. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 6 in said order and decree and is as follows: I understand then that Armour Car Lines is unwilling to state under what circumstances or conditions it acquired the equipment with which it does business?

9. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 7 in said order and decree and is as follows: Who are the officers of the Fowler Packing Company?

10. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 8 in said order and decree and produce the documentary evidence covered thereby: Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Company for furnishing cars at different points, called for by any contract that exists?

11. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 9 in said order and decree and is as follows: At East St. Louis, what packing company furnishes the principal tonnage moved in Armour Car Lines' cars?

12. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 10 in said order and decree and is as follows: In the next column, Mr. Ellis, under the head of other property appears nothing at all. Did Armour

Car Lines own any property other than their rolling stock?
313 13. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 11 in said order and decree and is as follows: Where are the cars of

Armour Car Lines repaired when not repaired in shops of railroads?

14. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 12 in said order and decree and is as follows: With who is settlement made, or by whom is settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Company?

15. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 13 in said order and decree and is as follows: From whom do Armour Car Lines receive payment directly for refrigeration or icing service performed?

16. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 14 in said order and decree and is as follows: Do Armour Car Lines manufacture all of their own equipment?

17. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 15 in said order and decree and to produce the documentary evidence covered thereby: Mr. Ellis, the Armour Car Lines were asked by the Interstate Commerce Commission to furnish, and I quote now from the written request, "an income statement showing in detail the credits to income from all sources, and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year." I now ask for the same statement, with this modification, that the Commission desires an income statement showing in detail the credits to income, and the debits to income of whatever nature, and the total credits and total debits as shown by the books of the Armour Car Lines, as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation, as that term is defined in Section 1 of the Act of Regulate Commerce. I ask you if such a statement will be furnished.

314 18. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 16 in said order and decree and is as follows: Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines?

19. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 17 in said order and decree and is as follows: Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business?

20. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 18 in said order and decree and is as follows: What is done with the cars manufactured by Armour Car Lines?

21. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 19 in said order

and decree and is as follows: Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines?

22. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 20 in said order and decree and to produce the documentary evidence covered thereby: Will you furnish an income statement showing in detail the credits to income and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting and leasing cars, and furnishing icing and refrigeration service?

23. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 21 in said order and decree and to produce the documentary evidence covered thereby: Please furnish a statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting and leasing cars, and furnishing icing and refrigeration service.

315 24. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 22 in said order and decree and to produce the documentary evidence covered thereby: Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the end of its last fiscal year, and by icing station is meant station at which icing and refrigeration is done.

25. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 23 in said order and decree and to produce the documentary evidence therein covered thereby: Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by rail, from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.

26. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 24 in

said order and decree and to produce the documentary evidence covered thereby: Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines?

316 27. The Court erred in ordering and directing the said Frederick W. Ellis to answer the following question which is numbered 25 in said order and decree and to produce the documentary evidence covered thereby: Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed.

28. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 26 in said order and decree and is as follows: Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour Car Lines for the last fiscal year after the books were closed; those two requests being made separately.

29. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 27 in said order and decree and is as follows: Mr. Ellis, I hand you the report made by your company in answer to interrogatories propounded by the Commission, that particular answer being the answer to question 10 on Form No. 6.

30. The Court erred in ordering and directing the said Frederick W. Ellis to answer the question which is numbered 28 in said order and decree and is as follows: Mr. Ellis, why did Armour Car Lines report the last three years and not any further? Why did they stop at 1910. (?)

31. The Court erred in granting the motion of the said Interstate Commerce Commission to strike from the answer in this proceeding and in striking from said answer the following allegations appearing in paragraph 5 thereof:

"And in this connection respondent alleges that said Armour Car Lines and said Armour & Co. are separate and distinct corporations, and states that a list of the officers and stockholders of said Armour Car Lines was furnished to said Commission pursuant to its said orders; but respondent specifically denies that said Armour Car Lines has been or is used or controlled by said Armour & Company or by any other person or corporation, as a device to obtain concessions from said carriers from the published rates of transportation on shipments, or to obtain rates of transportation on shipments which were or are less than those contemporaneously applied to the transportation of like shipments of competitors, or to obtain any undue and unreasonable advantage which subjected competitors to undue and unreasonable prejudice or disadvantage, or that said Armour Car Lines has at any time received, or does receive, from any common carrier for furnishing refrigerator cars or ice or for performing refrigeration service, unreasonable compensation which has at any time inured, or does inure to the benefit of

317

said Armour & Co., or of any other person or corporation, as referred to in the petition and respondent further alleges on information and belief that the services performed for and the ice sold to the various railroads by said Armour Car Lines, together with the compensation received by said Armour Car Lines from such railroads respectively for such services and ice and cars furnished, have been fully reported by said railroads, respectively, to the Interstate Commerce Commission."

32. The Court erred in holding that said allegations appearing in paragraph 5 of the said answer are not responsive to the averments of the petition.

33. The Court erred in holding that said allegations appearing in paragraph 5 of said answer are immaterial in this proceeding.

34. The Court erred in holding that the said allegations appearing in paragraph 5 of said answer state matters not competent for the respondent to prove in answer to the petition herein.

35. The Court erred in holding in and by its said order and decree that Armour Car Lines is a common carrier within the meaning of the Act to Regulate Commerce.

36. The Court erred in holding in and by its said order and decree that Armour Car Lines is engaged in transportation within the meaning of the Act to Regulate Commerce.

37. The Court erred in holding in and by its said order and decree that Armour Car Lines is a corporation subject to the provisions of the Act to Regulate Commerce.

38. The Court erred in holding in and by its said order and decree that the Interstate Commerce Commission has jurisdiction, power and authority to inquire into the affairs of said Armour Car Lines and to require said Armour Car Lines to produce before said Commission the information, documentary and otherwise, covered by the questions hereinbefore set forth.

39. As to each and every of the demands for information and documentary evidence involved in the said questions above enumerated, and each of the same, the Court erred in holding in and by its said order and decree that the said demand was within the scope of the orders of said Interstate Commerce Commission under which said inquiry was instituted and was being prosecuted.

318 40. As to each and every of the demands for information and documentary evidence involved in the said questions above enumerated, *the* each of the same, the Court erred in holding in and by its said order and decree that the said demand was relevant and material to the matter under investigation by said Interstate Commerce Commission as defined by its said orders, or was necessary in order to enable said Commission to discharge any duty or duties imposed upon said Commission by the Act of Regulate Commerce.

Wherefore, Said Respondent, Frederick W. Ellis, prays that said order and decree of said District Court of the United States for the Eastern District of Illinois in the above entitled matter, for the errors aforesaid and for other errors in the record and proceedings

in said matter and in the final order and decree aforesaid, may be reversed, and that said court may be directed to enter a final order and decree dismissing the petition of the Interstate Commerce Commission in said matter.

FRANK B. KELLOGG,
CORDENIO A. SEVERANCE,
ROBERT E. OLDS,
ALFRED R. URION,
C. J. FAULKNER, JR.,
Attorneys for Frederick W. Ellis.

Dated Chicago, Illinois.

(Endorsed:) Filed Nov. 16, 1914. T. C. MacMillan, Clerk.

319 And on to-wit: the sixteenth day of November, 1914, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

320 In the District Court of the United States, Northern District of Illinois, Eastern Division.

November 16, 1914.

Present: Hon. Kenesaw M. Landis, Judge.

INTERSTATE COMMERCE COMMISSION, Petitioner,

vs.

FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Order Denying Appeal.

Whereas, after hearing in this case the Court entered an order and judgment requiring the respondent, Frederick W. Ellis, to appear before the Interstate Commerce Commission, at a time and place to be fixed by the Commission, and answer each and all of the questions put to him by the said Interstate Commerce Commission, as more fully appears by the original order herein; and

Whereas, Said Frederick W. Ellis duly appeared by his counsel and prayed an appeal from said order and judgment to the Supreme Court of the United States and offered to give a bond in such sum and conditions as the Court should fix for costs and supersedeas, as required by law; and

Whereas, It is the opinion of the Court that the said order and judgment is not an appealable one,

Now, Therefore, It is hereby ordered that the petition of said

321 Frederick W. Ellis for an appeal from said order and judgment to the Supreme Court of the United States be, and the same is hereby denied.

Dated November 16, 1914.

KENESAW M. LANDIS,
United States District Judge.

322 And on to-wit: the nineteenth day of November, 1914, came the respondent in said entitled cause by his attorneys and filed in the clerk's office of said Court his certain petition for Appeal in words and figures following to-wit:

323 *Petition for Appeal.*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Petition for Appeal.

Now comes the above named respondent, Frederick W. Ellis, by his attorneys, and prays for the allowance of an appeal herein to the Supreme Court of the United States from the final order or decree of the District Court of the United States, Northern District of Illinois, Eastern Division, herein entered the 16th day of November, A. D. 1914, requiring respondent to appear before the Interstate Commerce Commission at a time and place to be fixed by said Commission, and answer each and all of the questions put to him by said Commission, and each and every part thereof; and the transcript of the record, proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to said Supreme Court of the United States; and that said appeal operate as a supersedeas, and that the amount of security which said respondent shall give and furnish on said appeal may be fixed; and that all further proceedings under said final order and decree be suspended and stayed pending said appeal.

Dated November 17th, 1914.

FRANK B. KELLOGG,
CORDENIO A. SEVERANCE,
ROBERT E. OLDS,
ALFRED R. URION.

Attorneys for Frederick W. Ellis.

(Endorsed:) Filed Nov. 19, 1914, T. C. MacMillan, Clerk.

324 (And on the same day to-wit: the nineteenth day of November, 1914, came the respondent in said entitled cause by his attorneys and filed in the Clerk's office of said Court his certain Assignment of Errors which said Assignment of Errors is the same as filed herein on the sixteenth day of November and not recopied here.)

325 And on to-wit: the seventeenth day of November, 1914, there was entered of record in the proceedings of said entitled cause a certain Order signed by the Hon. Willis Van Devanter, one of the Associate Justices of the Supreme Court of the United States. Said Order is in words and figures following to-wit:

326 In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION, Petitioner,

vs.

FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Order Allowing Appeal.

The above named Respondent, Frederick W. Ellis, having prayed for allowance of an appeal to the Supreme Court of the United States from the final order and decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered in the above entitled proceedings on the 16th day of November 1914, requiring said Respondent to appear before the Interstate Commerce Commission at a time and place to be fixed by the Commission and answer each and all of the questions put to him by said Commission as more fully appears by said order and from each and every part thereof; and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the said Supreme Court of the United States and said appeal operate as a supersedeas; and that the amount of security which said Respondent shall give and furnish on said appeal may be fixed; and that all further proceedings under said final order and

327 decree of said District Court of the United States may be suspended and stayed pending said appeal; and the said Respondent having presented and filed a bond with satisfactory surety in the penalty of Twenty five hundred dollars (\$2,500.00) conditioned on the prosecution of said appeal to effect by said Respondent, and to answer all damages and costs if said Respondent shall fail to make said appeal good:

It is now therefore ordered, That said appeal of said Respondent Ellis be and the same hereby is allowed and shall operate as a super-

sedeas; and that a transcript of the record, proceedings and papers upon which said order and decree of said District Court was made, duly authenticated, by sent to said Supreme Court of the United States; and that said bond be and the same hereby is approved; and that further proceedings under said final order and decree of said District Court be and the same hereby are suspended and stayed, pending said appeal.

WILLIS VAN DEVANTER,
*Associate Justice of the Supreme Court
of the United States.*

Dated this 17th day of November 1914.

Issuance and service of citation are hereby waived, this November 17, 1914.

JOS. W. FOLD,
Counsel for Interstate Commerce Commission.
FRANK B. KELLOGG,
Counsel for Frederick W. Ellis, Resp'd'nt.

(Endorsed:) Filed November 19th, 1914, T. C. MacMillan, Clerk.

328 And on to-wit: the nineteenth day of November, 1914, came the respondent in said entitled cause and filed in the Clerk's office of said Court his certain Bond on Appeal in words and figures following to-wit:

329 In the District Court of the United States, Northern District of Illinois, Eastern Division.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
FREDERICK W. ELLIS, Respondent.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring the Above-named Respondent, Frederick W. Ellis, to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Bond on Appeal.

Know all men by these presents, That we, Frederick W. Ellis, as principal, and National Surety Company, a corporation organized under the laws of the State of New York, and lawfully transacting business in the State of Illinois, as surety, are held and firmly bound unto the Interstate Commerce Commission in the sum of Twenty-five hundred and 00/100 Dollars (\$2,500.00), to be paid to the Interstate Commerce Commission, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 16th day of November, 1914.

Whereas, lately, at a term of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said court between the Interstate Commerce Commission, as petitioner, and Frederick W. Ellis, as Respondent, an order and decree was made against the said Respondent; and the said Frederick W. Ellis having obtained an order allowing an appeal to be taken to the Supreme Court of the United States to reverse the decree aforesaid;

Now, therefore, The condition of the above obligation is such that if the said Frederick W. Ellis shall prosecute his appeal to effect and shall answer all damages and costs if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

FREDERICK W. ELLIS. [SEAL.]
NATIONAL SURETY COMPANY,
By E. A. ST. JOHN,
Resident Vice-President.

Attest:

Attest:

[SEAL.]

EMIL L. LEDERER,
Resident Assistant Secretary.

STATE OF ILLINOIS,
County of Cook, ss:

I, Harry F. Keator, a Notary Public, of Cook County, in the State of Illinois, do hereby certify that E. A. St. John, Resident Vice-President, and Emil L. Lederer, Resident Assistant Secretary of National Surety Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument for and on behalf of National Surety Company for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Chicago, in said County, this 16th day of November, A. D. 1914.

[SEAL.]

HARRY F. KEATOR,
Notary Public.

My Commission Expires Feb. 5th, 1918.

Approved: November 17, 1914.

WILLIS VAN DEVANTER.

Associate Justice.

(Endorsed:) Filed Nov. 19, 1914. T. C. MacMillan, Clerk.

332 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete Transcript of the proceedings had of record in said Court, in the cause entitled Interstate Commerce Commission vs. Frederick W. Ellis, as the same appear from the original Records and Files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District, this twenty-first day of November, 1914.

[Seal of District Court U. S., Northern Dist., Illinois. 1855.]

T. C. MACMILLAN, *Clerk,*
By JOHN H. R. JAMAR,
Deputy Clerk.

Endorsed on cover: File No. 24,456. N. Illinois D. C. U. S. Term No. 712. Frederick W. Ellis, appellant, vs. The Interstate Commerce Commission. Filed December 2d, 1914. File No. 24,456.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

FREDERICK W. ELLIS, APPELLANT,	} No. 712.
v.	
THE INTERSTATE COMMERCE COMMISSION.	

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.*

MOTION BY THE APPELLEE TO ADVANCE.

Comes now the Solicitor General, and moves the court to advance the above-entitled cause for hearing on a day convenient to the court during the present term.

This was a petition in equity filed in the district court, under the provisions of the act to regulate commerce, by the Interstate Commerce Commission against Frederick W. Ellis, vice president and general manager of Armour Car Lines, a corporation engaged in furnishing refrigerator cars and ice for interstate shipments of freight articles. The petition prayed for an order of the court to require said Ellis to appear before said commission and to make full answer to certain questions theretofore refused to be answered by said Ellis and set forth at length in said

petition, and to require the production before the commission by said Ellis of the documentary evidence covered by such questions.

Prior to the filing of the petition and pursuant to complaint filed with the Interstate Commerce Commission, certain orders were promulgated by that body directing an inquiry into the matter of "private cars" and the practices, etc., in connection with their operation in interstate commerce, in violation of the provisions of the act to regulate commerce. Copies of these orders were served upon Armour & Co., a corporation engaged in the interstate shipment of fresh meats and packing-house products, and upon Armour Car Lines, a corporation engaged in furnishing to common carriers refrigerator cars and ice for such shipments.

Pursuant to such orders, a special hearing of the Interstate Commerce Commission was held in Chicago for the purpose of inquiring into and examining the matters and things in said orders set forth.

In response to a subpoena served upon the said Ellis, he appeared before the commission at this special hearing and was asked certain questions with reference to the general officers of Armour & Co. and Armour Car Lines, the contractual and other relations between these two corporations, etc., which questions he was required to answer by said commission. He was also requested to furnish documentary evidence covered by said questions, which evidence he was required by said commission to furnish. Upon advice of counsel, he declined to answer said

questions, and also declined to furnish said documentary evidence.

Thereupon the commission filed in the district court the petition herein referred to, for the purpose of ascertaining whether, through stock ownership or otherwise, said Armour & Co. was controlling said Armour Car Lines and using the latter as a device for obtaining concessions, rebates, etc., or whether Armour Car Lines was receiving from common carriers for furnishing refrigerator cars and ice unreasonable compensation inuring to the benefit of said Armour & Co., in violation of the act to regulate commerce. Answer was filed by said Ellis, and after consideration of motions, etc., the district court entered a decree requiring the appearance before the Interstate Commerce Commission of said Ellis, upon due notice, at a time and place to be designated therein, and to make full answer to certain questions (28 in number) in said decree specified, and to produce the documentary evidence covered thereby. From this decree an appeal has been prosecuted to this court.

The questions required to be answered by this decree and the documentary evidence covered thereby have to do with the officers of Armour & Co. and the positions which they held with that corporation; whether any of the officers of Armour & Co. occupy positions or maintain relations with Armour Car Lines; how Armour Car Lines acquired title from Armour & Co. et al. to the cars held by them; the contractual relations between Armour & Co. and Armour Car

Lines; extracts from the books of Armour Car Lines showing income, etc.

The case is one of general public importance, and as it affects the operation of the Interstate Commerce Commission with reference to its conduct of inquiries and investigations, the power to prosecute which is prescribed by the act to regulate commerce, it should be disposed of as promptly as possible.

Notice of this motion has been served upon opposing counsel.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1915.

○

Office Supreme Court, U. S.

FILED

MAR 16 1915

JAMES D. MAHER

CLERK

IN THE
Supreme Court
of the United States

OCTOBER TERM, 1914.

No. 712.

FREDERICK W. ELLIS,

Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION,

Respondent.

BRIEF FOR APPELLANT.

FRANK B. KELLOGG,

C. A. SEVERANCE,

ROBERT E. OLDS,

ALFRED R. URION,

CHARLES J. FAULKNER, JR.,

Solicitors for Appellants.

Merchants National Bank Bldg.,

St. Paul, Minnesota.

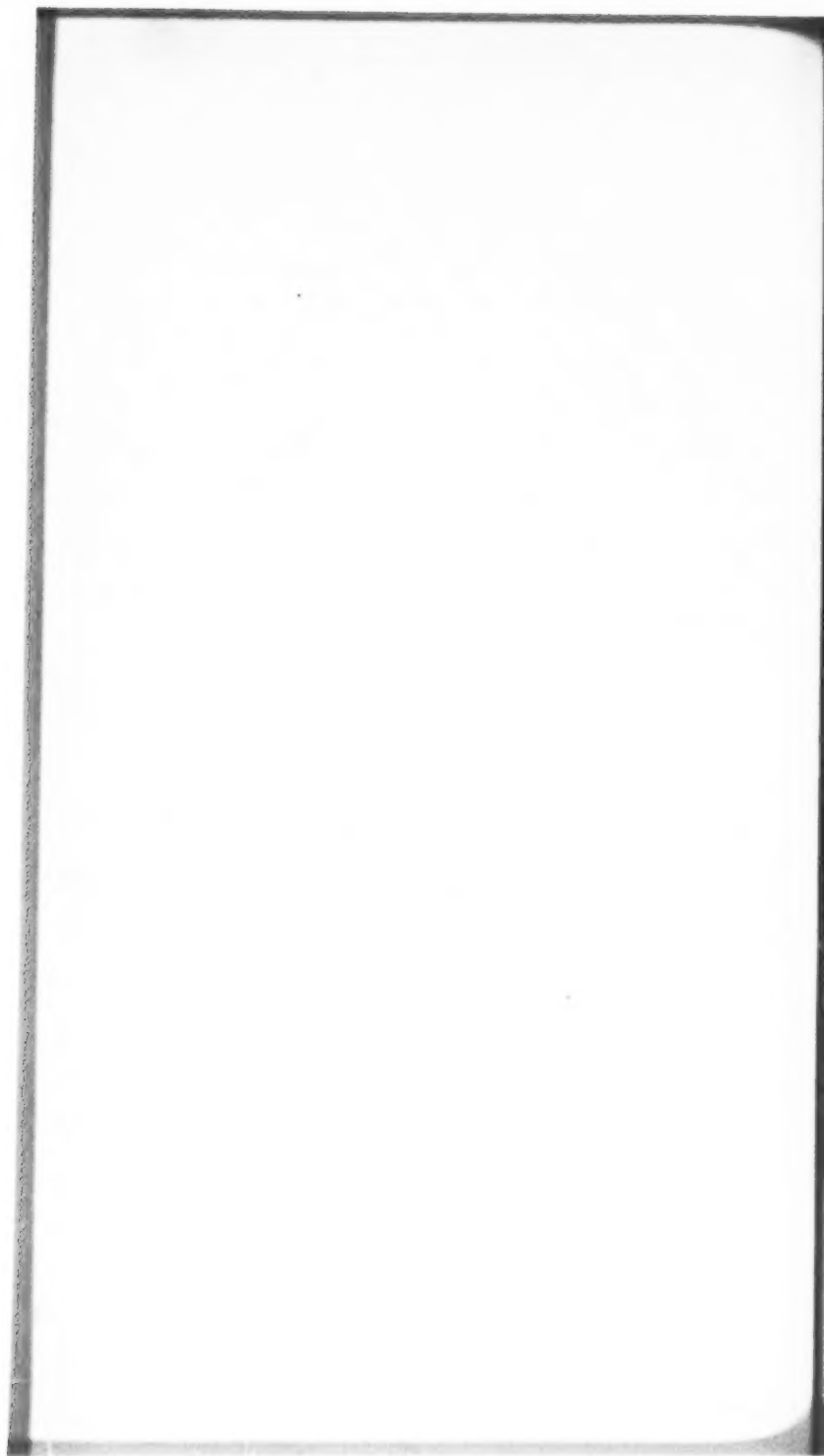


TABLE OF CONTENTS.

	Page.
STATEMENT OF CASE.....	1
SPECIFICATION OF ERRORS.....	17
ARGUMENT	18
1. <i>Armour Car Lines is not a "common carrier," nor is it engaged in "transportation," within the meaning of the Act to Regulate Commerce.....</i>	18
2. <i>The demands of the Commission involve an unwarranted extension of its inquisitorial powers and constitute an unlawful invasion of the private rights and affairs of the respondent and of the company he represents</i>	63
3. <i>The demands involved in this proceeding do not fall within the scope of the Commission's orders.....</i>	112
RIGHT OF APPEAL.....	123
CONCLUSION	141
APPENDIX	145

LIST OF CASES.

	Page
Baird case, 194 U. S. 25.....	83, 127
Baltimore & Ohio S. W. Ry. v. Boight, 176 U. S. 498	102
Boyd v. U. S., 116 S. W. 616; 6 Sup. Ct. Rep. 524	66
Cattle Raisers' Assn. of Texas v. Fort Worth & Denver City Ry., 7 I. C. C. 513.....	38
Consolidated Forwarding Co. v. Southern Pac., 9 I. C. C. 182, 206L.....	30
Cotting v. Kansas City Stockyards Co., 183 U. S. 95	99
Employers' Liability Cases, 207 U. S. 463.....	64
Enterprise Transportation Co. v. Pennsylvania Rd. Co., 121 I. C. C. 236.....	37
Ex Parte Koehler, 36 Fed. 867.....	32
Gracie v. Palmer, 8 Wheaton 605.....	31
Harriman v. Interstate Commerce Commission, 211 U. S. 407.....	81, 105, 127
Hirsch v. New England Navigation Co., 113 N. Y. Supp. 395.....	40
Hopkins v. United States, 171 U. S. 578.....	71, 81
Interstate Commerce Commission v. Brimson, 154 U. S. 447, 448.....	70, 83, 127
Interstate Commerce Commission v. Railway Co., 167 U. S. 506.....	83
Interstate Commerce Commission v. Reichmann, 145 Fed. 235	53, 83
Kentucky & I. Bridge Co. v. Louisville & Nash- ville Rd. Co., 37 Fed. 573.....	44
Kilbourn v. Thompson, 103 U. S. 168.....	67
Lemon v. Pullman Palace Car Co., 52 Fed. 262..	46
Long v. Lehigh Valley Rd. Co., 130 Fed. 870....	102

N. P. v. Adams, 192 U. S. 440.....	102
Omaha Street Ry. v. Interstate Commerce Commission, 230 U. S. 324.....	40
Pacific Ry. Comm. Case, 32 Fed. 241.....	65
Parmelee Transfer Co., 12 I. C. C. 40.....	33, 40
Parmelee v. Lowitz, 74 Ill. 116.....	34
Parmelee v. McNulty, 19 Ill. 556.....	34
Pullman Co. v. Linke, 203 Fed. 1017.....	45
State ex rel v. Union Stockyards Co., 115 N. W. 627, 631	43
Santa Fe v. Grant Bros., 228 U. S. 177.....	102
San Diego v. National City, 174 U. S. 757.....	84
Smyth v. Ames, 169 U. S. 546.....	83
Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498.....	52
Tap Line Cases, 234 U. S. 1.....	1, 29
Texas Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 438.....	83
United States v. Louisville & Nashville Rd. Co., (Filed Feb. 23, 1915).....	104, 109, 117
United States v. Milwaukee Refrigerator Transit Co. et al., 145 Fed. 1007.....	56
United States v. Union Stockyards & Transit Co., 226 U. S. 286.....	47
Union Stockyards Co. of Omaha v. United States, 169 Fed. 404.....	41

IN THE
Supreme Court
of the United States

OCTOBER TERM, 1914.

No. 712.

FREDERICK W. ELLIS,

Appellant,

v/s.

THE INTERSTATE COMMERCE COMMISSION,

Respondent.

BRIEF FOR APPELLANT.

STATEMENT.

The Interstate Commerce Commission has brought this proceeding under Section 12 of the Act to Regulate Commerce. The prayer of the petition is that the respondent be required to appear, testify and produce documentary evidence in compliance with certain demands made in the course of a general investigation begun

by the Commission on its own motion. The ultimate question to be decided is whether a corporation, not itself a common carrier engaged in transportation, may, by reason of the fact that it sells materials and service to railroads under contract, be compelled to lay before the Commission in a public inquiry all of its affairs, including detailed statements of its costs and profits. Does every corporation which sells materials or supplies to a common carrier engaged in interstate commerce thereby subject its entire business to the scrutiny of the Commission?

One June 5, 1912, the Commission began an investigation on its own motion, entitled, "In the Matter of Private Cars." The original order (Transcript, p. 131) recited that because the *allowances* paid by carriers for the use of private cars, the *practices* governing the handling and icing of such cars, and the *minimum carload weights* applicable to commodities shipped by them appeared to be unjust, unreasonable and unduly discriminatory, the investigation was therefore undertaken to determine whether such *allowances*, *practices* or *minimum carload weights* were unjust, unreasonable or unduly discriminatory. All carriers by railroad were directed to be made parties respondent.

On October 8, 1912, the Commission made a second order entitled in the same matter. (Transcript, p. 132.) This order provided that

in view of complaints from growers of fruit and vegetables about the failure of carriers to furnish an adequate and prompt supply of refrigerator cars and to transport their products with reasonable expedition, hearings on this subject should be had in connection with the general investigation. The order was directed to be served upon certain railroad companies.

Among the companies served, although not named or directly referred to in either of the orders, was Armour Car Lines, a corporation organized under the laws of the State of New Jersey. The business of that company is fully and accurately described in the third paragraph of the answer. (Transcript, p. 121.) Armour Car Lines owns, manufactures, maintains and repairs refrigerator, tank and box cars designed for the transportation of perishable food products and certain oils, such as oleo oil and cotton seed oil. It rents these cars, usually to railroads, but sometimes to shippers. The rental is computed on the basis of use per diem or per month, but more often on the basis of mileage made by the cars. In addition to building, repairing and renting cars, the company sells ice to railroads, and maintains icing plants or icing stations, so-called, at various points along lines of railway throughout the United States. From these stations the company sells ice and performs the service of icing and re-icing cars for the

respective railroads on whose lines the plants are located. As compensation for this service, Armour Car Lines receives from the railroads a fixed amount per car iced or per ton of ice furnished. This compensation is irrespective of the charge made by each railroad to its shippers for icing and re-icing cars. The railroad charge to shippers is found in the published tariffs on file with the Commission. Only at one point, to-wit, Toledo, Ohio, where the railroad charge happens to be identical with the Armour Car Lines charge made under its contract with the railroad, does the former company, for convenience, collect its charge from the shippers direct instead of from the railroad.

Armour Car Lines also at times enters into and performs contracts with railroads for the furnishing, icing and re-icing of cars for the transportation of perishable fruits and vegetables. These contracts fix the rental for the use of the cars and the charges for icing and re-icing. They are on file with the Commission.

The company has no motive power or transportation equipment other than the cars which it owns and rents. It has no control over the movement of its cars either in interstate commerce or otherwise. It derives no revenue from the cars or from their use beyond the rentals paid by railroads and shippers. It has no interest, direct or indirect, in the freight or trans-

portation charges which the railroads collect for the transportation of commodities shipped in the cars. It receives no commissions on freight carried in the cars. It issues no bills of lading and makes no contracts of shipment or carriage whatever. The goods shipped in the cars are not delivered into the possession of Armour Car Lines, but always into the possession and custody of the railroad company, which seals the cars, issues bills of lading, and collects the transportation charge, which includes not only the carriage but the refrigeration of the shipment. Armour Car Lines is not itself a shipper of any of the commodities carried in its cars. It has no control over these shipments or over the routing thereof. Except as we have stated, its dealings are exclusively with the railroads.

All of these facts pertaining to the business of the Armour Car Lines were made known to the Commission either by the terms of contracts already on file in its office, or by the answers to interrogatories furnished in connection with the general investigation above mentioned. On February 27, 1913, the Commission formulated and sent to various companies, including Armour Car Lines, the questions attached as an exhibit to the answer. (Transcript, p. 131 et seq.) So far as these questions related to the allowances, practices and minimum carload weights referred

to in the Commission's orders, they were fully answered. (Transcript, p. 126.) The Commission, not satisfied with this information, proceeded, on August 7, 1913, to make a formal demand for detailed income and profit and loss statements. The demand of the Commission is set forth at length in the answer. (Transcript, pp. 127-8.) On August 18, 1914, Armour Car Lines, through its counsel, respectfully declined to furnish the additional information, for the reason that it touched matters beyond the jurisdiction of the Commission. On September 15, 1913, the Commission, evidently of the opinion that its prior orders were inadequate, made a second supplemental order which, after reciting at length the earlier orders, proceeds, (Transcript, pp. 7 and 8):

"And it further appearing that certain individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilitates of shipment or carriage of property in interstate commerce are necessary parties to this proceeding;

It is ordered, That all individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce be, and they hereby are, made parties respondent to this proceeding."

This action was followed on October 1, 1913, by a renewal of the demand for the information mentioned in the Commission's letter of August 7, 1913. (Transcript, p. 129.) The company, through its counsel, declined to acknowledge that the situation had been changed by the September order, and therefore adhered to its former position.

The next step taken by the Commission was the holding of a special hearing at Chicago on January 22, 1914. At this hearing the respondent Ellis appeared in response to a subpoena, and was examined by counsel for the Commission. He testified that he was vice president of Armour Car Lines, and named Mr. G. B. Robbins as president of the company. He explained how and by whom the capital stock of the company was held, and described fully the business in which the company was engaged. The various communications which passed between the Commission and Armour Car Lines on the subject of the furnishing of information were put in evidence while respondent was on the stand. He testified at length concerning the number and kinds of cars owned by the company, described the territory in which they moved, how and where they were located, and by what shippers they were principally used. He defined the terms "icing" and "refrigeration," distinguished them, and described in detail the company's

facilities for furnishing the service of icing and refrigeration, giving the storage capacity of its principal icing stations.

The respondent, while giving freely the fullest information bearing upon the relations of his company with the railroads, declined, on advice of his counsel, to go into matters affecting costs and profits and the company's relations with others. A perusal of this record will show that respondent's counsel endeavored carefully to draw the line between the relations of Armour Car Lines to all common carriers with which it did business on the one hand, and what they regarded as its private affairs on the other. In drawing this line, counsel were obliged to advise the witness not to answer certain preliminary questions which in themselves would have been unobjectionable if they had not been frankly designated by counsel for the Commission as part of a series of questions by which it was proposed to go into the entire business of Armour Car Lines. An example of this attitude of counsel is found on page 103 of the transcript, where the following colloquy appears:

"Mr. Boyle: Where are the cars of Armour Car Lines repaired? When not repaired in shops of railroads?

Mr. Severance: I want to state, your Honor, that if this merely involves a question or two for a little information, I do not object to it. But if it is proposed to follow

this up in detail and attempt to find out or elicit evidence as to cost of repairs and maintenance of shop, and that sort of thing, I shall object to it, and if counsel will kindly advise me his intention in regard, I will know whether to object to this. The particular question I would not object to, unless it is a part of a series by which counsel is going to (to) attempt to go into the whole business of Armour Car Lines.

Mr. Boyle: That is what we are going to do.

Mr. Severance: I will object to it and give the same advice to the witness as before, for the reasons stated.

Commissioner McChord: Answer the question.

Mr. Boyle: I will state that we want to go into the business of Armour Car Lines in so far as they are engaged in any business affecting transportation, as that term is used in Section 1 of the Act to Regulate Commerce, and to that end I think the question asked is relevant and material, and will ask that the Commission direct that it be answered.

Commissioner McChord: Let him answer."

Counsel for the Commission apparently regarded the entire subject of costs and profits as a legitimate field of inquiry. It was not sufficient that the materials furnished and the services performed, and the prices and compensation

paid by the railroads therefor be fully set forth. The cost to Armour Car Lines of furnishing the materials and performing the service, and the profits accruing to the company in this connection, were demanded. A typical question upon which issue was taken, appears on page 115 of the record:

“Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by rail, from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.”

The broad ground thus taken by counsel for the Commission was adopted both with regard to icing plants and cars. The demand for state-

ments of income and profits was made under varying forms. The objection to this demand was made as broad as the demand itself. Some of the preliminary questions might have been answered if they had not been openly stated to be part of the general scheme of drawing out the intimate affairs of the company under a claim that the Commission had a right to do so. The intention, however, on both sides has been to raise for determination this simple issue: whether, under the facts presented, the Interstate Commerce Commission may compel the production of detailed statements of income, profits and losses by a company standing in the relation to the transportation business occupied by Armour Car Lines. If this question is answered in the affirmative, then the control of the Commission over the general business interests of the country is far greater than is commonly supposed. The claim of the Commission in this case would make the affairs of every person or corporation having dealings with railroads through sale of materials and supplies or through contracts for services subject to investigation by the Commission.

The petition whereby the Commission now invokes the aid of the court nowhere avers that Armour Car Lines is itself a common carrier. The answer specifically states that the company is not a common carrier. (Transcript, p. 125.)

Counsel for the Commission in their argument in the court below made no such claim.

The respective positions of the parties to this controversy are fairly illustrated by the following quotations from the answer and from the argument of counsel for the Commission. The answer alleges, (Transcript, p. 125):

“Said Armour Car Lines has been at all times, and is now, ready and willing to furnish to said Commission full information concerning its contracts or arrangements with common carriers by railroad under which it is furnishes and rents its said cars, sells ice, and its services in icing and re-icing cars at designated points to said common carriers, subject to the Act to Regulate Commerce; the nature of the service performed by it under such contracts or arrangements, the rate of compensation it receives from such carriers for its said cars, ice sold and services performed thereunder and the amounts of compensation so received from said carriers, respectively, therefor; and that said Armour Car Lines has furnished all of such information pursuant to the orders and requests of the Commission in this proceeding, when such requests for information have not been inseparably coupled with demands for other information to which it believes the Commission is not entitled in this proceeding.”

Mr. Farrell, speaking for the Commission in the court below, said:

"But will anybody admit—certainly I will not—that the Interstate Commerce Commission could not go to the Baldwin Locomotive works or any other similar institution and make an inquiry concerning the cost of a locomotive sold to a railroad company for the purpose of ascertaining whether the funds of the railroad company were being expended wisely or otherwise? *

* * I think the Commission would have a right to subpoena before it any officer connected with the Baldwin Locomotive Works or any other similar institution and compel him to give them information concerning the cost of certain things."

The petition among other things alleged that the Commission had

"concluded it was its duty to ascertain whether, through stock ownership or by some other means to your petitioner unknown, said Armour & Co. was controlling said Armour Car Lines and using the same as a device to obtain concessions from the published rates of transportation on its said shipments from said carriers, or to obtain rates of transportation on its said shipments which were less than those contemporaneously applied to the transportation of like shipments of its competitors, or to obtain for itself undue and unreasonable advantage which subjected such competitors to undue and unreasonable prejudice and disadvantage; or whether said Armour Car Lines was receiving from said common car-

riers for furnishing refrigerator cars and ice and for performing refrigeration service, as aforesaid, unreasonable compensation, which inured to the benefit of said Armour & Co., by reason of which the provisions of sections 1, 2, 3 and 15 of said act, above quoted, or any of them, had been and were being violated."

The answer, after alleging that the respondent had no knowledge or information as to whether the Commission had come to the conclusion stated in the petition, contained the following allegation:

"And in this connection respondent alleges that said Armour Car Lines and said Armour & Co. are separate and distinct corporations, and states that a list of the officers and stockholders of said Armour Car Lines was furnished to said Commission pursuant to its said orders; but respondent specifically denies that said Armour Car Lines has been or is used or controlled by said Armour & Co., or by any other person or corporation, as a device to obtain concessions from said carriers from the published rates of transportation on shipments, or to obtain rates of transportation on shipments which were or are less than those contemporaneously applied to the transportation of like shipments of competitors, or to obtain any undue and unreasonable advantage which subjected competitors to undue and unreasonable prejudice or disadvantage, or

that said Armour Car Lines has at any time received, or does receive, from any common carrier for furnishing refrigerator cars or ice or for performing refrigeration service, unreasonable compensation which has at any time inured, or does inure to the benefit of said Armour & Co., or of any other person or corporation, as referred to in the petition and respondent further alleges on information and belief that the services performed for and the ice sold to the various railroads by said Armour Car Lines, together with the compensation received by said Armour Car Lines from such railroads respectively for such services and ice and cars furnished, have been fully reported by said railroads, respectively, to the Interstate Commerce Commission."

These allegations of the pleadings constitute the first intimation anywhere in the record that the question of rebates was in any way involved. No such suggestion is found in the orders of the Commission by which the investigation was started, or in the written inquiries submitted to Armour Car Lines, or in any of the questions put upon the hearing either to the respondent or to any other witness.

At the hearing the Commission excepted to the foregoing allegation of the answer, and moved to have it stricken, on the ground that it was not responsive to the averments of the petition, was immaterial and stated matters not com-

petent to be proved by the respondent in answer to the petition.

The decree entered on November 16, 1914, granted the motion to strike, and also granted the entire relief demanded in the petition. (Transcript, p. 137.) Judge Landis held that the judgment was not appealable, and therefore denied the petition for an appeal to this court, whereupon application was made to a justice of this court who allowed the appeal on November 17, 1914. (Transcript, p. 151.)

SPECIFICATION OF ERRORS.

The assignments of error will be found in the transcript of record at page 143. They consist of a separate assignment with respect to each of the questions and demands which the appellant, on advice of his counsel, refused to answer or comply with. They also assign as error the granting of the motion to strike from the answer the allegations of paragraph 5 thereof, above quoted. The appellant has further assigned as error the action of the lower court in holding that Armour Car Lines is a common carrier within the meaning of the Act to Regulate Commerce; that the company is engaged in transportation so as to be subject to the provisions of the Act; that the Commission has jurisdiction, power, and authority to inquire into the affairs of the company to the extent indicated by the questions and demands; and that such questions and demands were relevant and material to the matter under investigation, and were within the scope of the orders which the Commission had made.

ARGUMENT.

I.

ARMOUR CAR LINES IS NOT A "COMMON CARRIER,"
NOR IS IT ENGAGED IN "TRANSPORTATION,"
WITHIN THE MEANING OF THE ACT TO REGU-
LATE COMMERCE.

The powers and duties of the Interstate Commerce Commission are prescribed solely by the provisions of the Act to Regulate Commerce. This proceeding, as appears from the petition, is brought under certain provisions of Section 12 of the act, reading as follows:

"That the Commission hereby created shall have authority to inquire into the management of the business of all *common carriers subject to the provisions of this act*, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain *from such common carriers* full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; * * * and for the purposes of this act the Commission shall have power to require by subpoena, the attendance and testimony of witnesses and

the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

* * * * *

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matters in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof."

In this connection, the petition also sets forth the following provisions of Section 13:

"* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act,

including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money."

What is meant by the language "in any case and as to any matter or thing concerning which a complaint is authorized to be made" appears by an examination of the preceding portion of Section 13 where it is provided that any person, firm or corporation "complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof may apply to said Commission by petition, etc."

It is clear that the power of the Commission to inquire into the management of the business of all common carriers subject to the provisions of the act was intended to be complete, so as to reach and furnish means for dealing with any question which might arise under the act or be related to the enforcement of any of its provisions. It will, however, be noted that the authority to inquire is specifically confined to "the management of the business of all common carriers subject to the provisions of this act." Within that field of inquiry, Congress undoubtedly intended to confer upon the Commission comprehensive powers. It could act upon complaint or on its own motion, and in either case it could

push its investigation to any extent that might be necessary to elicit the material facts, and could invoke the aid of the federal courts in so doing.

It becomes, therefore, of vital importance to determine what is a "common carrier subject to the provisions of the act." The definition is found in Section 1, where it is stated:

"That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity * * * by means of pipe lines * * * and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia to any other State or Territory, etc. * * *

The term 'common carrier' as used in this act shall include express companies and sleeping car companies. The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or

property designated herein, and also freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor;
* * *"

This language was evidently framed with the utmost care, and it leaves little room for interpretation. In order to be subject to the act, one must be a common carrier engaged in transportation wholly or partly by railroad. There are just three terms in this provision which could be subject to further definition,—“common carrier,” “transportation” and “railroad.” The general meaning of the term “common carrier” is settled. It is perhaps sufficient to refer to the definition in Bouvier:

“A common carrier is one whose business, occupation or regular calling it is to carry chattels for all persons who may choose to employ and remunerate him.”

For the purpose of making the scope of the term perfectly clear, Congress, in Section 1, made a special class of pipe lines and provided that telegraph, telephone and cable companies, express companies and sleeping car companies should be included in the term "common carrier" as used in the act. The words "railroad" and "transportation" were also given exact definition. An attentive examination of these provisions will show that Congress had in mind a definite principle of great practical value. At the time the act was amended in 1906 so as to bring in express companies and sleeping car companies, it was suggested that private car line companies which furnish refrigerator cars and perform the services of icing and refrigeration be specifically brought under the jurisdiction of the Commission. The subject will be found fully discussed in report made to Senator Elkins as Chairman of the Senate Committee on Interstate Commerce by Professor H. C. Adams and H. T. Newcomb, who had been appointed by the Committee as experts to gather data and make a report on the general subject of railroads and the necessity for further legislation. In their recommendation relating to private cars these experts say:

"The railways assume no responsibility for the charges for icing, heating, and the like, which are services universally conceded to be essential for the transportation of cer-

tain classes of goods, a fact which leads to uncertainty as to the conditions of shipment and which tends to destroy those commercial relations necessary for the maintenance of a free and stable market.

* * * The chief objection seems to arise on account of the fact that private persons or corporations and not the railways are the owners of this special equipment, and that they rent their cars to the railways, receiving from the railways a rental computed on a running mileage basis."

(Referring to the complaints on this subject,—see Digest of the Hearings before the Committee on Interstate Commerce, Senate of the United States. December 15, 1905.)

After referring to the suggestions that private car lines be put under the law and be required to publish their rates and charges in the same manner as if they were common carriers, the report proceeds:

"The main objection to the above plan comes from the shippers who make use of this class of equipment, the ground of their objection being that the shipper loses the advantages that arise from dealing with a single corporation. In case of loss or damage, for example, responsibility would be divided and adjustment would consequently become more difficult. The task of localizing the responsibilities for discriminations also,

should discriminations complained of lie in the character of services rendered, would be increased.

As a means of obviating the objection of dividing the responsibility, it is proposed to extend the meaning of the word 'transportation' to include all services rendered in connection with the carriage of goods. This proposal regards the business of transportation as composed of two classes of services—the primary service of carrying the goods and the accessorial service of caring for the goods while in transit, whenever such care calls for special facilities or special equipment. The proposition under consideration is that the carrier be held responsible for the accessorial as well as for the primary service, that the tariff should be the tariff of the carrier and not of the car owner and should include the charges for both classes of services, and that any action of any kind growing out of this service, so far as warranted by Federal Statute, should be addressed to the carrier and not to the owner of special facilities.

This opinion finds frequent expression in the testimony. The following quotation states clearly the point of view:

'I would make the railroads responsible for everything transported on their lines, the private cars and private car lines and everything, and would make them report to the Commission just as they do now the rates for everything. They report some

things now. I would make them report everything—the rates for icing and everything of that kind. I think the railroads ought to be responsible for it.’

It should be noted at this point that a number of witnesses denied the existence of the alleged abuses, and that many shippers in refrigerator cars testified to their satisfaction with present conditions.”

Congress adopted the suggestion last referred to. In the debate in the Senate, Senator Dolliver said:

“The new bill requires the carrier to deal with the car company (which hires its cars) and the shipper to deal only with the carrier
* * * It follows that if this measure becomes a law, all these extra charges must be computed in the transportation rate; so that if they are unreasonable or unjustly discriminatory, they can be dealt with as the statute provides. (Cong. Rec., Vol. XL, 3194.)
* * *

The bill leaves every railway in the country enjoying the exact freedom which it now has to contract with Armour Car Lines or other private car lines for any service which they may have for sale. It lays no limitation whatever upon the use of the private car equipment of the United States. * * * It simply subjects the charges made against the shipper to the jurisdiction of the Interstate Commerce Commission, by requiring the charges agreed upon between the private car line and railroad company to be com-

puted as a part of the cost of transportation and to be published as a part of the railroad rate." (Cong. Rec., Vol. XI., 6374.)

It appears that when the bill was under consideration in the senate, the following amendment by way of addition to Section 1 was offered by Senator Kittredge of South Dakota (page 6438):

"Companies or persons owning, leasing, managing or operating cars used in the business of carrying any kind of property, including live stock, though such cars run upon railroads not owned, leased, managed, or operated by such companies or persons, shall be deemed to be carriers engaged in the transportation of property by railroad within the meaning of this act."

In the course of the debate a clear statement of the position taken by the senate committee and afterwards embodied into law, was made by Senator Clapp of Minnesota, as follows:

"Mr. President, I cannot believe that the Senator from South Dakota fully realizes the scope of his proposed amendment. I fully agree with him, as every one else must agree with him, as to the evil known as the private car lines. As he wisely suggested in his remarks last Friday, one of the remedies is the elimination of the private car lines. The committee at its hearings last spring and the members of the committee in considering this subject have been face

to face with the proposition whether private car lines could be eliminated. We recognize it is the law that a common carrier must furnish the facilities for transportation; we realize that they depend today very largely upon the private car lines for those facilities; and now to abruptly require them to make the necessary investment and to create that disturbance which would result from the prohibition of the use of these cars by anything but a railroad company seemed entirely too drastic, and the committee had to abandon that thought.

The next plan was how best to meet the evil of the private car lines. One difficulty today is that the shipper of fruit and other freight requiring refrigeration has to deal not only with the railroad company which transports that freight, but also he has to deal with the company owning these private cars; and while it did not seem a bit feasible, if advisable, to eliminate the private cars, it did seem as though we ought to take one step forward and require the common carrier to furnish these cars so far as the shipping public is concerned, so that the shipper would have to deal only with one corporation, and that would be the carrier, and the carrier would be free either to buy its cars, own its cars, rent its cars, or employ the cars owned by the private car line companies. so long as in its last analysis the cost of transportation, including refrigeration and those things especially inherent in the

private cars, was within the control of the Interstate Commerce Commission and the shipper had to deal only with one person, and the Commission had to deal only with one person, and that the common carrier. So we provided first as to what a carrier—a railroad—should be, what transportation should be, bringing refrigeration, icing, and all these matters finally under the one head of transportation or freight, so that it would simplify the subject both with the shipper and the Commission. * * *

I hope before the senate thus, within the purview of this law, legalize the operation of the private car lines they will consider if it is not better, for the time being at least, to place every item of transportation subject to the railroads, so that the shipper and the Commission will have to deal primarily and exclusively with the railroad company alone."

The amendment offered by Senator Kittredge was voted down. (Congressional Record, Volume 40, page 6440.)

It is, therefore, perfectly certain that Congress intentionally differentiated between the carrier and its subcontractors who deal only with it and not with the public. Express Companies and Sleeping Car Companies are brought under the act, because they deal directly with the public.

In the Tap Lines Cases, 234 U. S. 1, the Court resorted to the debates in Congress at the time

the Commodities Clause was inserted in the Act. The Court did this "for the purpose of ascertaining the situation which prompted this legislation" and determining what led to the exemption from the Commodities Clause of timber and manufactured products.

It may be noted here that the Commission prior to 1906 did not regard private car lines as falling within their jurisdiction. In *Consolidated Forwarding Co. v. Southern P. Co. et al.*, 9 Interstate Commerce Reports, 182, 206L, Commissioner Knapp said:

"In my opinion the defendant carriers are under no legal obligation to provide icing for orange shipments. In point of fact, as I hold, they have not undertaken to supply refrigeration for this traffic, but on the contrary have expressly declined to do so. The private car companies actually performing that service and receiving what is paid therefor are not common carriers, and for that reason are not subject to our jurisdiction."

The situation could hardly have been changed in that respect after Congress had expressly declined to include such companies.

Again the Commission in its report to Congress dated December 24, 1903, in the course of its comments upon the decision in the Harriman case, said:

"This Commission, in administering this

power of investigation, which it has assumed to exercise in the past, has repeatedly held that the private dealings of individuals in private matters could not be inquired into. It has, however, ruled that it might inquire to the fullest extent into the operations of railroads and the officers of railroads."

The distinction between a common carrier by railroad subject to the act, and a corporation performing the functions of the Armour Car Lines, is clear. It is nowhere in the petition asserted that Armour Car Lines is a common carrier or that it performs any transportation service as that term is defined in the act. It is merely engaged in furnishing refrigerator cars and in performing the icing service for the railroads over whose lines the cars may run. It has nothing whatever to do with the movement of the cars or with the carriage of goods in them. It has no interest in the shipment itself or in the freight charges. It simply rents cars for a stipulated price and sells ice, together with the service of icing. The distinction between what Armour Car Lines does and the function of a common carrier is well recognized. It was aptly stated by the Supreme Court of the United States long before the Interstate Commerce Act was thought of, in *Gracie v. Palmer*, 8 Wheaton, 605. In the opinion of the court by Justice Johnson, it was said:

"The carrier may hire his vehicle, or his

team, or his servant, for the purposes of transportation; or he may undertake to employ them himself in the act of transporting the goods of another. It is in the latter case only that he assumes the liabilities, and acquires the rights of a common carrier. So the ship-owner, who lets his ship to hire to another, whether manned and equipped or not, enters into a contract totally distinct from that of him who engages to employ her himself in the transportation of the goods of another. In the former case he parts with the possession to another, and that other becomes the carrier; in the latter he retains the possession of the ship, although the hold may be the property of the charterer; and being subject to the liabilities, he retains the rights incident to the character of a common carrier."

Even where a company's status as a common carrier is undisputed, it does not follow that the company is subject to the act. Only common carriers of a certain class are included.

In 1887, the year the Interstate Commerce Act was passed, Judge Deady in the Circuit Court for the District of Oregon, had occasion to consider the scope and application of Section 1. *Ex Parte Koehler*, 30 Fed., 867. The question was raised by the receiver of the Oregon & California Railway Co., who asked for instructions. Judge Deady said:

"There is no doubt that this railway and

these steamers are engaged in interstate commerce in the carriage of these goods under the circumstances stated. * * * But the interstate commerce act does not include or apply to all the instrumentalities or agencies used or engaged in interstate commerce. It does not include any water-craft, unless it is used in connection with a railway, 'under a common control, management, or arrangement, for a continuous carriage or shipment.' * * * The questions involved in this inquiry arise on the first section of the act. Taking its several clauses together my impression is that no carrier is within its operation unless he is engaged in interstate commerce by means of a railway or railway and water-craft under one 'control, management or arrangement,' and that by such means or instrumentalities he does actually and continuously carry goods from within to without the state, or from without to within the same. He may form a link of interstate commerce; but, if his relation to such commerce or interest in or liability for the carriage thereof does not extend beyond the line of the state, he is not within the act."

The Interstate Commerce Commission itself has construed Section 1 so as to give the act no application to an omnibus and transfer company which was concededly engaged as a common carrier in interstate commerce. The point arose in the so-called Parmelee Transfer Co. case, 12 I. C. C. Rep., 40. The Parmelee Company claimed

the right to exchange free transportation with railroad companies. The nature of the company's business is familiar to the court. The Commission held that the Parmelee Company was not subject to the act and that therefore the railway companies which were subject to the act could not exchange free transportation with it. Commissioner Harlan, in the opinion, said (page 41):

"Because of this definite and important relation to the interstate passenger traffic through Chicago the petitioner, in an extended brief by counsel, claims the status of a common carrier, subject to the provisions of the act to regulate commerce as amended on June 29, 1906. It contends that it has the right under Section 1 of the act to participate in the exchange of free transportation with other carriers, and it now asks for an administrative ruling by the Commission to that effect.

As demonstrating that the petitioner is a common carrier, reference is made by counsel to *Parmelee v. McNulty*, 19 Ill., 556, and to *Parmelee v. Lowitz*, 74 Ill., 116, where the Supreme Court of Illinois, referring to the petitioner, held that the owner of an omnibus line is a common carrier just as much as is the owner of a railroad or a line of steamboats, and that it is therefore responsible as a common carrier for the loss of a trunk and its contents.

That the petitioner is a common carrier

may be admitted not only on the authority of those cases, but on the authority of many other cases that might be cited in which hacks, baggage wagons, cabs, drays, carts, coaches, and omnibuses have been held to be common carriers and their owners subject to the liabilities of common carriers. The transfer of through passengers and their baggage across the City of Chicago in the manner described may also be conceded to be interstate commerce. And in making the transfer the petitioner is undoubtedly a direct and immediate servant of the interstate public. The real point, however, in this inquiry is whether the Frank Parmelee Company is a common carrier *subject to the provisions of the act to regulate commerce* as amended on June 29, 1906. If it is, then railroad companies may lawfully exchange free transportation with it. If it is not, its officers, agents, and employees cannot lawfully be granted free transportation by the interstate railroad companies. Is it then a common carrier subject to the provisions of the act?

The first paragraph of the first section limits the application of the various provisions of the act not to all common carriers, but to certain classes of common carriers there expressly named and specified.

* * * * *

Aside from the pipe lines and sleeping car and express companies, which are named in a specific and separate clause, the only com-

mon carriers to which the provisions of this act apply (vide Section 1) are those engaged in the transportation of passengers or property 'wholly by railroad or partly by railroad and partly by water.' And certainly the petitioner is engaged in transportation neither by rail nor by water. It is said, however, that the service performed by the petitioner in transferring passengers and baggage in its omnibuses and express wagons across the City of Chicago from the arriving to the departing train is the same service that would be performed by a connecting belt railroad, if the transfer from one station to the other were made in that way, as it doubtless is in some cases. In its results the service is the same in each case. But in one case the carrier is a rail line and in the other an omnibus line. The former is included within the act and is subject to all its provisions. The latter is omitted, and by necessary implication is excluded altogether from the effects of the act. In making such transfer the omnibuses and express wagons of the petitioner are simply one of the 'Instrumentalities and facilities of shipment or carriage' which the law requires 'every carrier *subject to the provisions of this act* (i. e., a pipe, rail, or water line, etc.), to provide and furnish at reasonable rates as a part of the interstate transportation which such carrier contracts to perform."

After discussing some previous decisions of

the Commission involving stage lines, the opinion proceeds:

"We are constrained, therefore, to hold that, although the petitioner is a common carrier, and is performing a service connected with interstate passenger traffic, it is nevertheless not a carrier subject to the provisions of the act to regulate commerce."

Here was a case where the company was not only admittedly a common carrier engaged in interstate transportation on a large scale, but also was coming in direct contact with the public. It not only owned, but actually operated the instrumentalities of interstate commerce in transporting persons and property. As urged in the argument, the company performed precisely the same functions as those of a belt line railway connecting up all of the railroads entering a large city. Nevertheless, the Commission held and was bound to hold that the Parmelee Company was not a common carrier subject to the act, for the reason that it was not engaged in transportation by railroad.

In Enterprise Transportation Co. v. Pennsylvania Railroad Co., 12 I. C. C. Rep., 236, the Commission had under consideration a petition to establish joint through rates where a part of the transportation was performed by a ferry company. The contention and the decision are

indicated in the following quotation from the opinion by Commissioner Prouty:

"It has been earnestly pressed upon the attention of the Commission that under the first section bridges, and ferries are especially excepted and that they are not required when forming links in through routes to publish their rates. Such is not our interpretation of that provision of the statute. Bridges, ferries, switches, and terminal facilities are declared to be included within the term 'railroad' not for the purpose of exempting them from any liability to publish and observe their rates when such ferries or bridges are operated by their owners as common carriers, but rather to make certain that where these agencies are employed by railroads the transportation services rendered by them shall still be subject to the provisions of the act to regulate commerce. It often happens that bridges are constructed and terminal facilities provided by independent companies, which lease them to railroad companies under various conditions. The intent of the first section was to insure that the carriage of freight and of passengers should be subject to the act from its inception to its conclusion, and that the jurisdiction of the Government over such transportation should not be divested by the fact that any agency used in the transportation was furnished by some party other than the common carrier itself.

In Cattle Raisers' Assn. of Texas v. Fort

Worth & Denver City Ry., 7 I. C. C. Rep., 513, 536, it appeared that the Union Stock Yards & Transit Company provided certain tracks leading into the stock yards, the use of which it leased for a certain amount per car to the various railroads delivering stock at the stock yards. The track was maintained by the stock yards company, but the transportation was conducted by the different railroad companies. Under these circumstances we held that the Union Stock Yards & Transit Company was not within our jurisdiction and not a proper party to a complaint alleging that the charge made by the various railroads for the delivery of stock at the stock yards was excessive.

A railroad company may without doubt provide by contract with an independent company for the construction of a bridge or a ferry to be used as a part of its line. It can perhaps extend its contract to the operation of the bridge or ferry by its owner when constructed; but in such case the bridge company or the ferry company is not a common carrier. The railroad is the carrier and answerable to the law as such. The bridge or the ferry is really a part of the railroad itself as much as though owned by it.

It has been suggested that possibly a ferry company might serve the public as a common carrier with respect to a portion of its traffic while conducting under special contract as a private carrier business received from or delivered to the railroad company.

If we were to assume that this might be so, still there is nothing of the sort here."

In *Hirsch v. New England Navigation Co.*, 113 N. Y. Sup., 395, the Appellate Division of the Supreme Court of New York held that a firm of truck men engaging to haul goods from docks and depots to stores was not a common carrier within the meaning of the Interstate Commerce Act.

The United States Supreme Court in *Omaha Street R'y v. Interstate Commerce Commission*, 230 U. S., 324, decided in June, 1913, held that a street railway was not a railroad within the meaning of Section 1, and was therefore not subject to the jurisdiction of the Commission even though the street railway was engaged in the transportation of passengers over the state line from Omaha, Nebraska, to Council Bluffs, Iowa. Mr. Justice Lamar, delivering the opinion, said (page 334):

"The statute in terms applies to carriers engaged in the transportation of passengers or property by railroad. * * *

But all the decisions hold that the meaning of the word is to be determined by construing the statute as a whole. If the scope of the act is such as to show that both classes of companies were within the legislative contemplation, then the word 'Railroad' will include street railroad. On the other hand, if the act was aimed at railroads proper,

then street railroads are excluded from the provisions of the statute. Applying this universally accepted rule of construing this word, it is to be noted that ordinary railroads are constructed on the companies' own property. The tracks extend from town to town and are usually connected with other railroads, which themselves are further connected with others, so that freight may be shipped, without breaking bulk, across the continent. Such railroads are channels of interstate commerce. Street railroads, on the other hand, are local, are laid in streets as aids to street traffic, and for the use of a single community, even though that community be divided by state lines, or under different municipal control. When these street railroads carry passengers across a state line they are, of course, engaged in interstate commerce, but not the commerce which Congress had in mind when legislating in 1887."

(Pages 335-336.)

In *Union Stockyards Co. of Omaha v. United States*, 169 Fed., 404, the Circuit Court of Appeals for the 8th Circuit, held that the Union Stockyards Co. of Omaha was a "common carrier engaged in interstate commerce by railroad" within the meaning of the Safety Appliance Law. It there appeared that the Stockyards Co. maintained extensive yards amounting to a live stock depot for all railroad companies doing business at Omaha; that it owned and maintained several

miles of railroad track extending from the yards to a transfer track (also on its own premises) connecting with the tracks of the various railroad companies; that by means of its own locomotives and servants it transported for hire over its tracks all shipments of live stock accepted by the railroad companies for carriage to and from the yards. In the course of the opinion Mr. Justice Van Devanter said (page 406):

"It must be conceded that the stockyards company would not be a common carrier, nor the property used by it a railroad, if its operation were confined to maintaining the sheds or pens, to unloading shipments thereto, to loading shipments therefrom, and to feeding, watering, caring for, and otherwise handling live stock therein. But its operations are not thus confined. On the contrary, they include the maintenance and use of railroad tracks and locomotives, the employment of a corps of operatives in that connection, and the carriage for hire over its tracks of all live stock destined to or from the sheds or pens, which, in effect, are the depot of the railroad companies for the delivery and receipt of shipments of live stock at South Omaha. The carriage of these shipments from the transfer track to the sheds or pens and vice versa is no less a part of their transit between their points of origin and destination than is their carriage over any other portion of the route. True, there is a temporary stoppage of the

loaded cars at the transfer track, but that is merely incidental, and does not break the continuity of the transit any more than does the usual transfer of such cars from one carrier to another at a connecting point. And it is of little significance that the stockyards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire a part of the transportation of every live stock shipment which they accept for carriage to or from that point, including such shipments as are interstate. Moreover, the Supreme Court of Nebraska pronounces it a common carrier in the special line to which it devotes its energies, although not a common carrier for all purposes. *State ex rel. v. Union Stockyards Co.* (Neb.), 115 N. W., 627, 631. In these circumstances controlling decisions leave no room to doubt that it is a common carrier engaged in interstate commerce by railroad within the meaning of the safety appliance law."

Evidently the Court would not have hesitated to say that Armour Car Lines is not a common carrier subject to the Act to Regulate Commerce. It was clear beyond any question that a stockyards company which owned and even went so far as actually to operate unloading facilities and in connection therewith, handled interstate ship-

ments, would not be a "common carrier engaged in interstate commerce by railroad." Here Armour Car Lines have nothing whatever to do with the shipments. They do not load or unload them, and every service performed by Armour Car Lines is one for which the railroad is responsible to the shipper. The Armour Car Lines is, as to this service, only a sub-contractor of the railroad company and looks to the railroad company alone for its compensation.

In *Kentucky & I. Bridge Co. v. Louisville & Nashville Railroad Co.*, 37 Federal, 573, Justice Jackson in the Circuit Court held that where a bridge company contracted with a railroad company giving the railroad company the right to run its trains over the bridge, the bridge company was not a common carrier subject to the act to regulate commerce. He said:

"The provision of Section 1, referred to, provides that 'the term "railroads," as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.' Having, by contract with the petitioner, not only acquired the right to use said bridge and approaches, but secured for its engines, cars and trains, a preference over all other railroads in such

use, down to its southern terminus in the City of Louisville, and being in the actual use thereof under said contract, during the period covered by the present controversy, the Ohio & Mississippi Railway Company must, for the time being, be regarded as the owner or operator of such bridge and approaches, under the above provision of law, as to all freights transported by said company; and the through traffic which it carries over said bridge to its yards and depot in Louisville is in no sense either handled or moved by petitioner as a common carrier. In thus making the bridge and approaches a part or portion of the line of the railroad which uses or operates it under contract, there is a clear implication that the act to regulate commerce did not intend to include such bridges as independent carriers or 'railroads' coming within the purview of the law."

In *Pullman Co. v. Linke*, 203 Fed., 1017, Satter, District Judge for the Southern District of Ohio, held that a sleeping car company furnishing cars under contract to a railroad company acquired the status of a common carrier solely by virtue of the specific provision to that effect in the Act to Regulate Commerce as amended in 1906. The court said (page 1019):

"A sleeping car company it is true, by furnishing sleeping cars under a contract with a railroad company to be used by the traveling public, does not thereby assume

or acquire the status of a common carrier of goods or passengers (*Lemon v. Palace Car Co.* (C. C.), 52 Fed., 262; Elliott, Railroads, § 1616; Beale, Innkeepers & Hotels, § 342; Hutchinson, Carriers, § 1130; 25 Am. & Eng. Ency. Law, 1110, 1111), unless declared to be such by some constitutional or statutory provision. It merely furnishes accommodations to the passengers of another company and performs only an auxiliary function in their transportation; but it is nevertheless engaged in a public calling. 6 Cyc., 656; Elliott, Railroads, § 1618. Section 1 of the Interstate Commerce Act as amended June 29, 1906, 34 Stat. L., 584, provides that the term 'common carrier' as used in that act shall include sleeping car companies. By virtue of this statutory provision, the plaintiff's status at the time of the seizure of the car was in legal contemplation the same as that of an interstate carrier."

Prior to the statutory provision it had been held that the Pullman Company was not a common carrier. *Lemon v. Pullman Palace Car Co.*, 52 Fed., 262. It may be noted that the situation with regard to the Pullman Company is closely analogous to that with which we are concerned in this proceeding. The Pullman Company furnishes cars under contract to the railroad company, which is responsible for their movement and operation. The Pullman Company then performs the service of providing lodging in the cars for the accommodation of those who pay

for it, the only difference between the Pullman Company and the Armour Car Lines in this respect being that the Pullman Company comes in direct contact with the public and collects its compensation from the passengers, while the icing service provided by the Armour Car Lines is one for which the railroads themselves assume responsibility and for which they collect their own charges. The services rendered by Armour Car Lines is stipulated for by contract and paid for at contract prices, irrespective of the published tariff rates of the railroad companies covering such service.

In *United States v. Union Stockyards & Transit Co.*, 226 U. S., 286, the court held that the respondent company was a common carrier subject to the act, and was consequently bound to file tariffs, make reports and keep accounts pursuant to Sections 6 and 20. The Attorney General, at the request of the Commission, filed a bill to enjoin the Stockyard Company and the Junction Railway Company, another corporation, from further engaging in interstate commerce until they had filed tariffs, as provided by Section 6, and requiring said companies to file statements and reports as provided by Section 20. The Commerce Court held that the Stockyard Company was not a common carrier, but that the Junction Railway Company was a common carrier subject to the act, and therefore obliged to

file its tariffs. It appeared that the Stockyard Company was incorporated under a special act which authorized it to construct the railway with such tracks as might be necessary to connect its yards with the tracks of the railroads terminating in Chicago. It was also authorized to transport and allow to be transported live stock as well as freight and property of every kind, over said tracks. Under its charter it acquired real estate, constructed and operated yards and built about 300 miles of railroad track. Prior to 1897 it carried on the stockyards and railroad business, and although it had regular charges for the service performed, it filed no tariffs with the Commission and concurred in none. In 1897 it leased all of its tracks and equipment for a term of fifty years to a certain company which afterwards went into a consolidation, and became known as the Chicago Junction Railway Company, which in addition to the road leased from the Stockyard Company operated a belt line around the City of Chicago. The belt line was afterwards sold, and the Junction Company retained the tracks which had been leased from the Stockyard Company. The equipment operated by the Junction Company and consisting of locomotives and rolling stock, was owned by the Stockyard Company. The Junction Company employed its own engineers and crews. After the lease to the Junction Company, the Stock-

yard Company continued to operate its stockyard facilities for loading and unloading, feeding and watering live stock. A company known as the Investment Company held over ninety per cent. of the shares of the Stockyard Company and practically all of the shares of the Junction Company. The lease to the Junction Company provided that the Stockyard Company should get two-thirds of the profits received by the Junction Company for performing the service in connection with railroad transportation. Mr. Justice Day, after stating this fact, said (page 303):

"In view of this continuity of operation, the manner of compensation and the performance of services in connection with interstate transportation by railroads such as are described, are the Stock Yard Company and the Junction Company subject to the terms of the Act to Regulate Commerce and bound to conform to its requirements?

The Interstate Commerce Act, as amended by the Hepburn Act, 34 Stat., 584, c. 3591, § 1, applies to common carriers engaged in the transportation of persons or property from state to state wholly by railroad, and the term railroad is defined to include 'all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property;' and transpor-

tation is defined to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.'

* * * *

We think that these companies, because of the character of the service rendered by them, their joint operation and division of profits and their common ownership by a holding company, are to be deemed a railroad within the terms of the Act of Congress to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act. It is the manifest purpose of the act to include interstate railroad carriers, and by its terms the act excludes transportation wholly within a state. In view of this purpose and so construing the act as to give it force and affect, we think the Stock Yard Company did not exempt itself from the operation of the law by leasing its railroad and equipment to the Junction Company, for it still receives two-thirds of the profits of that company and both companies are under a common stock ownership with its consequent control. We therefore think the Commerce Court was right in holding that the Junction Company should file its rates

with the Interstate Commerce Commission and that it should also have held the Stock Yard Company subject to the provisions of the Interstate Commerce Act."

The decision in the Union Stockyard case is an emphatic recognition of the principle for which we contend. There the Stockyard Company was held to be a common carrier within the meaning of the act, for the reason that it had made common cause with the carrier which was engaged in the actual work of transportation, as that term was defined in Section 1. There was not only a common ownership of the two companies, but the Stockyard Company was a partner in the transportation business. By the terms of the lease under which the Junction Company acquired the tracks and equipment, the Stockyard Company received two-thirds of the profits arising from the transportation business.

There is no suggestion in this proceeding that Armour Car Lines occupied any different position from that of any other person or corporation which leases property or sells services to a common carrier. The petition alleges that it is a corporation engaged in furnishing refrigerator cars and in furnishing icing and performing refrigeration services in connection with the transportation of interstate shipments. The answer sets up fully the nature of the company's business and of its contracts with the railroad com-

panies. In fact, the Commission already had in the answers to questions submitted to the company, all of the details covering the relations of Armour Car Lines with railroads. There has never been the slightest objection at any time, nor is there now, to the fullest possible disclosures along that line. The relations between Armour Car Lines and common carriers by railroad subject to the act, would be a legitimate field of inquiry under the rule laid down in the Union Stockyard case; but it is not these relations which the Commission seeks to investigate in this proceeding. It demands to know the cost to Armour Car Lines of doing business and the profits which it may derive therefrom.

Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S., 498, is similar to the Union Stockyard case, in that the question of joint control of terminal facilities involving the function of transportation, was under consideration. That was a bill to enjoin an order of the Commission requiring the Terminal Company to desist from giving undue preference to a certain shipper through failure to exact from him payment of wharfage charges. It was contended that the Terminal Company was not subject to the jurisdiction of the Commission. It appeared that the Terminal Company owning the wharves, although a separate corporation, was, through stock ownership, a

part of a railroad and steamship system engaged in interstate commerce . The court (Mr. Justice McKenna) said (pages 523-524):

“Appellants urge the legal individuality of the different railroads and the Terminal Company and cite cases which establish, it is contended, that stock ownership simply or through a holding company does not identify them. We are not concerned to combat the proposition. The record does not present a case of stock ownership merely or of a holding company which was content to hold. It presents a case as we have already said, of one actively managing and uniting the railroads and the Terminal Company into an organized system. And it is with the system that the law must deal, not with its elements. Such elements may, indeed, be regarded from some standpoints as legal entities; may have, in a sense, separate corporate operation; but they are directed by the same paramount and combining power and made single by it. In all transactions it is treated as single.”

The reason for holding the Terminal Company subject to the jurisdiction of the Commission was that through active management as well as stock control, it was identified in interest with the carriers actually engaged in interstate transportation.

Interstate Commerce Commission v. Reichmann, 145 Fed., 235, was an application for an

order requiring a witness to answer a question. The Interstate Commerce Commission was engaged in an investigation instituted on its own motion. The respondent was the vice-president of Streets Western Stable Car Line, a company which owned a large number of cars in general use for the transportation of livestock. The company did not lease its cars to railway companies by regular contracts, but they passed indiscriminately over all lines. It received, however, as its sole revenue for the use of the cars, a certain amount for each mile run, paid by the railway company on whose rails the mileage was earned. The single question, to compel an answer to which the aid of the court was invoked, was this: "What part of the mileage or from whatever source have you given up to shippers during the last six months?" The question was obviously addressed to the proposition that the car line company was sharing its railroad payments with shippers who used its cars, thus bringing about in effect a rebate or discrimination, so far as such shippers were concerned. Judge Landis ruled that the question should be answered. In doing so he said:

"In considering the question I shall assume as counsel did at the argument, that an answer by the witness would have disclosed that payments of money were made by the Street Company to shippers of freight and with a view to thereby inducing

such shippers to demand that carriers furnish them with Street's cars for the transportation of their future shipments."

It therefore appeared that counsel admitted and the court assumed the existence of such payments by the car line company to shippers, and the only question was whether it was within the power of the Commission to prosecute its inquiries so as to bring out those particular facts. In other words, the Commission was endeavoring to trace the mileage payments and show that the car line company shared them with the shippers.

The Reichmann case does not touch the present controversy. No attempt was there made to delve into the profits and other strictly private affairs of the car line company. The company was asked only to tell whether it divided up its railroad payments with shippers, or at the most, whether it gave up to shippers any part of its income. It may well be conceded, for the purposes of the matter in hand, that information thus called for was pertinent to the general inquiry which the Commission was authorized to make; but that is very different from saying that it also would have been proper to require the car line company to disclose the cost of its cars and of repairs made upon them, and the company's profits derived from the conduct of its business.

It would have been a simple matter to ask the respondent such questions as that propounded in

the Reichmann case. Not a single question involved in this proceeding before the court is addressed to that idea. The answer filed herein shows conclusively that had such questions been asked, they would have been answered and it would have appeared that Armour Car Lines makes no payments whatever to shippers. This proceeding goes far beyond the issue in the Reichmann case. The demand there is not made here, and the record shows that if it had been made it would have been complied with. The present demands are for information concerning costs and profits which in the case of a corporation not itself a common carrier engaged in transportation within the meaning of the act, can have no place in any investigation which the Commission is authorized to make.

United States v. Milwaukee Refrigerator Transit Co. et al., 145 Fed., 1007, was a proceeding to enjoin the defendants from continuing certain practices contended to be in violation of the Elkins Act. It was charged that the refrigerator company was a dummy corporation organized by the defendant Pabst Brewing Co. and carried on as a device for securing rebates. The brewing company was alleged to be the beneficial owner of the stock of the refrigerator company which held contracts from the brewing company giving it the exclusive control of the latter's shipments of beer. It was further al-

leged that the railroad companies had submitted to the exactions of the refrigerator company by paying, with the intent of evading the law, one-tenth to one-eighth of the freight moneys on all such traffic controlled by the refrigerator company. It was shown that the majority of the stock of the brewing company was owned by persons who had no interest in the refrigerator company, and that a majority of the stock of the latter company was held by persons who also owned brewing company stock, but was bought and paid for with their own money and held in their own interest. The brewing company paid its freight in full, received no rebates and was not a party to the contracts between the refrigerator company and the railroad companies. The brewing company was accordingly dismissed from the suit. The court held that the concession received by the refrigerator company was unlawful. The ground of the decision will appear from the following excerpt from the opinion by Judge Baker (pages 1011, 1012, 1013):

"The company owns refrigerator cars which it places at the disposal of railroad companies for use by them in handling certain kinds of traffic, and they pay it rent for the cars in the form of mileage. There is neither averment nor proof which attacks the company in its character of lessor of cars to the railroads.

But, under the conceded facts, as we view

them, the refrigerator company in its relations with the railroads appears in another role—that of shipper. From the brewing company and other owners of goods intended for interstate and foreign transportation the refrigerator company obtains the exclusive right to route the shipments to all competitive points, and then withholds or gives the business according to the railroad companies' resistance or submission to the threat of diverting the traffic unless a tenth or an eighth of the freight moneys be paid to it. Control of the traffic is as absolute in the refrigerator company as if it were owner, and in numerous transactions the owner is not the shipper. And if an owner, having full dominion in all respects, conveys to another the dominion for transportation purposes, that other in all dealings respecting transportation should be deemed the owner and shipper. In this case, if the refrigerator company bought the beer, and paid the brewing company's bill less freight, and then collected the beer accounts, and paid the railroads seven-eighths or nine-tenths of the published rates, the granting of a rebate or concession by a carrier to a shipper would not be denied, we take it; and yet, so far as ledger balances and profits of the brewing company, the refrigerator company, and the railroads are concerned, the present method in its results is precisely that.

The foregoing consideration is in answer to defendants' insistence that the Elkins Act

touches only the carrier and the shipper. But under the strictest construction (and that the act should be fairly interpreted to effectuate its remedial purposes, see *New York, etc., R. M. Co. v. Interstate Commerce Commission* (U. S. Sup., Feb. 19, 1906), 26 Sup. Ct., 272, 50 L. Ed., —), we think it was designed to restrain all 'parties interested in the traffic.'

In Section 1:

'It shall be unlawful for any person, persons or corporation * * * to solicit, accept, or receive and rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce * * * whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier.'

In Section 2:

'It shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration.'

And in Section 3:

'Upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs * * * by proper orders, writs and process * * * as well against the parties interested in the traffic as against the carrier.'

So, if the refrigerator company be not considered as the shipper, it is, at least, a 'party interested in the traffic.'

4. In the practice stated it is evident that the railroad companies, in acceding to the demands of the refrigerator company, have (1) failed strictly to observe the published tariffs, and (2) granted concessions whereby they received a less rate than that named in the published tariffs for the transportation of property in interstate and foreign commerce, both in disregard of the provisions of Section 1.

It matters not that the particular practice herein disclosed is not described in the act. The inhibition of 'any device whatever' that accomplishes the condemned results is a ban upon invention in this field."

It is significant to note that while a previous decision in this case on demurrer by Judge Sanborn proceeded on the ground that the refrigerator company was in effect the *alter ego* of the brewing company, Judges Baker, Grosscup, Seaman and Kohlsaat, who sat at the final hearing, discarded that ground and arrived at the same conclusion by considering the refrigerator company as in effect a shipper, or at least a "party interested in the traffic."

The Milwaukee case has little in common with the pending suit. There is no claim that Armour Car Lines has any control over or interest in the shipments made in its cars. It does not negotiate with railroads either as a shipper or as the representative of any shipper. The railroads pay it a stipulated rental for its cars and agreed amounts

for the service of icing. It has nothing to do with the freight rate to be charged.

Counsel for the Commission did not allege in the petition that Armour Car Lines was a common carrier subject to the act; he made no such claim upon the argument. In fact he stated that the Commission was not asking for an order in this case on the ground that Armour Car Lines is a common carrier. It is perfectly clear that if Armour Car Lines were in that class, the Commission would have asserted its jurisdiction many years ago and would claim it at this time. The ground of the claim, however, under this point, is that as a railroad company is subject to the terms of the act and its business subject to investigation, therefore the business of all persons and corporations leasing cars, selling ice or other materials, or furnishing the railroad company with any facility for hire, is likewise under the act and the Commission. If that is the case, then why did Congress make sleeping car companies and express companies the objects of special provision? A railroad company is liable to furnish this information, if at all, on the ground that it is a common carrier by railroad subject to the act, and all its business in transportation is open to the inspection of the Commission; but Armour Car Lines is not such a corporation, nor is any company (not a common carrier), which sells or leases property to a railroad company.

Armour Car Lines does not furnish transportation to the public; the railroad company does this, and it was for this reason that Congress declined to make the car lines subject to the act. Congress wished to compel the railroads to furnish the entire service, and let them hire cars, or purchase cars, and buy ice and other material of whom they saw fit. It never has been held that the Commission has any power to supervise a sale of property or a contract of lease of property of any kind to a railroad company, or that the Commission has any jurisdiction whatever to inquire into such matters.

II.

THE DEMANDS OF THE COMMISSION INVOLVE AN UNWARRANTED EXTENSION OF ITS INQUISITORIAL POWERS AND CONSTITUTE AN UNLAWFUL INVASION OF THE PRIVATE RIGHTS AND AFFAIRS OF THE RESPONDENT AND OF THE COMPANY HE REPRESENTS.

It will doubtless be contended that although the Armour Car Lines is not a common carrier engaged in transportation, as defined by Section 1 of the act, still is so closely connected with such common carriers and is to such an extent one of the auxiliary agencies by which interstate commerce is carried on, that the Commission may, by virtue of its general powers of investigation into matters affecting interstate commerce, exact the information which it seeks. In other words, appeal will be made to some vague principle to the effect that he who performs even an accessorial service with reference to interstate commerce thereby submits all his business concerns to the regulating power of Congress and to the jurisdiction of the Commission. We do not believe that any such principle has yet found its way into our jurisprudence. On the contrary, we are confident of our ability to demonstrate that the suggested doctrine has met with uniform condemnation by the courts.

An analagous contention was made in the first *Employers' Liability Cases*, 207 U. S. 463. The following comments by Mr. Justice White (p. 502) are pertinent.

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable

matters which from the beginning have been and must continue to be, under their control so long as the Constitution endures."

Justice Field, in the *Pacific R'y Comm. Case*, 32 Fed., 241, took occasion to discuss this proposition in connection with the application of that commission for an order requiring a witness to answer certain interrogatories. The commission was proceeding under an act of Congress authorizing an investigation into the books, accounts and methods of railroads which had received aid from the United States. The learned justice said (page 250) :

"And in addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it cannot compel the production of the private books and papers of the citizen for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way

dependent for enforcement upon the evidence those books and papers contain.

Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all other rights would lose half their value. The law provides for the compulsory production, in the progress of judicial proceedings, or by direct suit for that purpose, of such documents as affect the interest of others, and also, in certain cases, for the seizure of criminating papers necessary for the prosecution of offenders against public justice, and only in one of these ways can they be obtained, and their contents made known, against the will of the owners.

In the recent case of *Boyd v. U. S.*, 116 U. S., 616, 6 Sup. Ct. Rep., 524, the Supreme Court held that a provision of a law of Congress, which authorized a court of the United States in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices, and papers, or that the allegations of the attorney respecting them should be taken as confessed, was unconstitutional and void as applied to suits for penalties or to establish a forfeiture of

the party's goods. The court, speaking by Mr. Justice Bradley, said:

'Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman: it is abhorrent to the instincts of an American. It may suit the purpose of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom.'

The language thus used had reference, it is true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a party otherwise than in the course of judicial proceedings, or a direct suit for that purpose. It is the forcible intrusion into, and compulsory exposure of one's private affairs and papers, without judicial process, or in the course of judicial proceedings, which is contrary to the principles of a free government, and is abhorrent to the instincts of Englishmen and Americans."

After quoting at length *Kilbourn v. Thompson*, 103 U. S., 168, the opinion proceeds (pages 253-254):

"The act of Congress not only authorizes a searching investigation into the methods, affairs and business of the Central Pacific

Railroad Company, but it makes it the duty of the railway commission to inquire into, ascertain, and report whether any of the directors, officers, or employes of that company have been, or are now, directly or indirectly, interested, and to what extent, in any railroad, steamship, telegraph, express, mining, construction, *or other business company or corporation*, and with which any agreements, undertakings, or leases have been made or entered into. There are over 100 officers, principal and minor, of the Central Pacific Railroad Company, and nearly 5,000 employes. It is not unreasonable to suppose that a large portion of these have some interest, as stockholders or otherwise, in some other company or corporation with which the railway company may have an agreement of some kind, and it would be difficult to state the extent to which the explorations of the commission into the private affairs of these persons may not go if the mandate of the act could be fully carried out. But in accordance with the principles declared in the case of *Kilbourn v. Thompson*, and the equally important doctrine announced in *Boyd v. U. S.*, the commission is limited in its inquiries as to the interest of these directors, officers and employes in any other business, company or corporation to such matters as these persons may choose to disclose. They cannot be compelled to open their books, and expose such other business to the inspection and examination of the commis-

sion. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railroad Company, and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit, in which some of those directors and officers and employes have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business."

Judge Sawyer, in a concurring opinion, said (page 263):

"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our Constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power be once established and there is no knowing where the practice under it would end."

Judge Sabin, in his concurring opinion, said (page 269):

"If this power of unlimited, inquisitorial investigation into the affairs of private corporations or companies, or of individuals,—and it concerns all alike,—shall be once

established, who can say where it will end, or what will be the limit of injustice at all times, but more especially when called into exercise in times of political excitement, or under the influence of partisan zeal or passion? In the close adherence to well-settled principles of law, founded upon the just observance of the rights of all parties, will we not find the greatest safety alike to public and private rights?"

Justice Field's remarks in the *Pacific Ry. Comm.* case, were quoted from with approval by the Supreme Court in *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, 478. Justice Harlan, writing the opinion in the *Brimson* case, said (pages 478-479):

"We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. *Kilbourn v. Thompson*, 103 U. S., 168, 190. We said in *Boyd v. United States*, 116 U. S., 616, 630,—and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employes of the sanctity

of a man's home, and the privacies of his life. As said by Mr. Justice Field in *In re Pacific Railway Commission*, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'

It was said in argument that the twelfth section was in derogation of those fundamental guarantees of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. It is scarcely necessary to say that the power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair those guarantees."

The attention of the court is particularly directed on this point to *Hopkins v. United States*, 171 U. S. 578. That was a suit commenced by the United States District Attorney under directions from the Attorney General to obtain the dissolution of the Kansas City Livestock Exchange and enjoin its members from entering into or continuing in any combination of a like character. The contention was that certain rules of the association forbidding members from buy-

ing livestock from commission merchants who were not members, etc., made the association a monopoly in violation of the Sherman Law. The Circuit Court granted the injunction, but the Supreme Court reversed this holding and directed the bill to be dismissed. It was pointed out by Justice Peckham in the opinion of the court that the business of the defendants was primarily and specifically the buying and selling in their character as commission merchants, of livestock. The court said (page 588):

"If an owner of cattle in Nebraska accompanied them to Kansas City and there personally employed one of these defendants to sell the cattle at the stock yards for him on commission, could it be properly said that such defendant in conducting the sale for his principal was engaged in interstate commerce? Or that an agreement between himself and others not to render such services for less than a certain sum was a contract in restraint of interstate trade or commerce? We think not. On the contrary, we regard the services as collateral to such commerce and in the nature of a local aid or facility provided for the cattle owner towards the accomplishment of his purpose to sell them; and an agreement among those who render the services relating to the terms upon which they will render them is not a contract in restraint of interstate trade or commerce. * * *

(Pg. 591.) Granting that the cattle themselves, because coming from another State, are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade. The commission agent in selling the cattle for their owner simply aids him in finding a market; but the facilities thus afforded the owner by the agent are not of such a nature as to thereby make that **agent an individual engaged in interstate commerce**, nor is his agreement with others engaged in the same business, as to the terms upon which they would provide these facilities, rendered void as a contract in restraint of that commerce. Even all agreements among buyers of cattle from other States are not necessarily a violation of the act, although such agreements may undoubtedly affect that commerce. * * *

(Pg. 592) *To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair meaning of the language used.* * * *

(Pgs. 592-593) Many agreements suggest themselves which relate only to facilities furnished commerce, or else touch it

only in an indirect way, *while possibly enhancing the cost* of transacting the business and which at the same time we would not think of as agreements in restraint of interstate trade or commerce. They are agreements which in their effect operate in furtherance and in aid of commerce by providing for it facilities, conveniences, privileges or services, but which do not directly relate to charges for its transportation, nor to any other form of interstate commerce. To hold all such agreements void would in our judgment improperly extend the act to matters which are not of an interstate commercial nature.

It is not difficult to imagine agreements of the character above indicated. For example, cattle, when transported long distances by rail, require rest, food and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception. Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract even if the lands or some of them, were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle

must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain compensation come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facilities, and that its charges for transportation are enhanced because of an agreement among the landowners along the line not to lease their lands to the company for such purposes for less than a named sum, could it be successfully contended that the agreement of the landowners among themselves would be in violation of the act as being in restraint of interstate trade or commerce? *Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between the States?* Would an agreement among dealers in horse blankets not to sell them for less than a certain price be open to the charge of a violation of the act because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expenses of sending the horses from one State to another for a market might be thereby enhanced? Would an agreement among cattle drivers not to drive the cattle after their arrival at the railroad depot at their place of destination to the cattle yards where sold, for less than a minimum sum, come within the statute? Would

an agreement among themselves by locomotive engineers, firemen or trainmen engaged in the service of an interstate railroad not to work for less than a certain named compensation be illegal because the cost of transporting interstate freight would be thereby enhanced? Agreements similar to these might be indefinitely suggested.

In our opinion all these queries should be answered in the negative. The indirect effect of the agreements mentioned might be to enhance the cost of marketing the cattle, but the agreements themselves would not necessarily for that reason be in restraint of interstate trade or commerce. As their effect is either indirect or else they relate to charges for the use of facilities furnished, the agreements instanced would be valid provided the charges agreed upon were reasonable. * * *

(Pg. 594-5) The fact that the above cited cases relate to tangible property, the use of which was charged for, does not alter the reasoning upon which the decisions were placed. The charges were held valid because they related to facilities furnished in aid of the commerce and which did not constitute a regulation thereof. Facilities may consist in privileges or conveniences provided and made use of or in services rendered in aid of commerce, as well as in the use of tangible property, and so long as they are facilities and the charges not unreasonable an agreement relating to their amount is not

invalid. The cattle owner has no constitutional right to the services of the commission agent to aid him in the sale of his cattle and the agent has the right to say upon what terms he will render them, and he has the equal right, so far as the act of Congress is concerned, to agree with others in his business not to render those services unless for a certain charge. The services are no part of the commerce in the cattle. * * *

(Pg. 597) But in all the cases which have come to this court there is not one which has denied the distinction between a regulation which directly affects and embarrasses interstate trade or commerce, and one which is nothing more than a charge for a local facility provided for the transaction of such commerce. On the contrary, the cases already cited show the existence of the distinction and the validity of a charge for the use of the facility."

One of the rules of the Exchange forbade the sending of prepaid telegrams or telephone messages with information as to the conditions of the markets. It was argued by counsel for the government that because no state or territory could enact a law interfering with or abridging the right to send prepaid telegrams of this nature, therefore an agreement to that effect entered into between business men would be void. Justice Peckham said (page 599):

"The conclusion does not follow from the facts stated. The statute might be

illegal as an improper attempt to interfere with the liberty of transacting legitimate business enjoyed by the citizen, while the agreement among business men for the better conduct of their own business, as they think, to refrain from using the telegraph for certain purposes, is a matter purely for their own consideration. There is no similarity between the two cases, and the principle existing in the one is wholly absent in the other. The private agreement does not, as we have said, regulate commerce or impose any impediment upon it or tax it. Communication by telegraph is free from any burden so far as this agreement is concerned, and no restrictions are placed on the commerce itself.

The act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it. We have no idea that the act covers or was intended to cover such kinds of agreements."

The Hopkins case manifestly has an important bearing upon this issue. It furnishes a striking example of the court's determination to protect the private rights of the individual from invasion by the government under the guise of a regulation of interstate commerce. So far as the principle is concerned, it makes no difference

whether the government bases its case upon the Sherman Law or upon the Interstate Commerce Act. Precisely the same reasoning which led the court to the conclusion that arrangements and agreements between business men relating to the facilities for, and affecting the cost of carrying on interstate commerce, do not fall within the condemnation of the Anti-Trust Act, applies to the government's claim under the Act to Regulate Commerce. In both cases the private business affairs of the citizen call for protection. The court in the Hopkins case was doubly impressed with the circumstance that under the contention of the government "there would scarcely be an agreement or contract among business men" that would not be affected by the statute. So here, the granting of the government's position would mean that the Commission might arrogate to itself authority over practically the entire business of the nation. Costs and profits constitute the very life of any business, and no person or corporation which has any dealings with railroads and at the same time ships goods in interstate commerce would be free from the prying scrutiny of the government inspector.

It is in the highest degree significant that the court, in the Hopkins case, put and answered the very problem now before us:

"Would an agreement between builders of cattle cars not to build them under a cer-

tain price be void because the effect might be to increase the price of transportation of cattle between the States?"

The court had no hesitation in answering that question in the negative. Here the Commission insists upon knowing what it costs Armour Car Lines to build and repair its cars. The Hopkins decision is authority for the statement that even if an agreement not to build the cars under a certain price could be shown, the fact would be immaterial so far as any question that might arise under the Anti-Trust Act is concerned. It would not be so connected with the actual carrying on of interstate commerce as to make it material. How could it be any more material in connection with any question arising under the Act to Regulate Commerce? In the Hopkins case the court was asked to consider such evidence as bearing upon a formal charge in a judicial proceeding for violation of a positive statute. Here the court is asked to subject the same private business affairs of the citizen to scrutiny, not for the purpose of evidence in a prosecution for specific violation of law, but as information for the benefit of an administrative body which is conducting an investigation on its own motion. We submit that the Hopkins decision is a conclusive authority against the government's position in this proceeding.

The scope of the Commission's power to com-

pel the giving of testimony before it in an investigation commenced on its own motion was carefully considered and defined by the Supreme Court in *Harriman v. Interstate Commerce Commission*, 211 U. S., 407. The case is therefore one of great importance for the purpose in hand. The order which lay at the foundation of the investigation was, so far as material, as follows (pg. 414):

"And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices, or methods result in violations of said act or tend to defeat its purposes. It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby instituted."

It will be noted that the scope of the investigation included not only consolidations and combinations of carriers and the relations existing be-

tween them involving community of interests, but also rates received and facilities furnished. In the course of the inquiry it appeared that the Union Pacific Railroad had purchased stock of the Southern Pacific, the Chicago & Alton, the Illinois Central, the Chicago and Northwestern, the Atchison, Topeka & Santa Fe, the St. Joseph and Grand Island and other companies, both competing and non-competing. Mr. Harriman, the President and Chairman of the Executive Committee of the Union Pacific Company, was called as a witness, and he was interrogated at length concerning the dividends paid by his company, the stock purchased by it in competing lines, the securities it had issued for the purpose of making such purchases, the rates charged by the Union Pacific, and the reason why its rates were generally higher than those on other lines throughout the country. He testified to placing a mortgage of \$100,000,000 on the Union Pacific Road, and stated that the money was used for the purchase of Southern Pacific and Northern Pacific stocks. He also testified to various other purchases. He was then asked whether he was personally interested in the stocks so sold to the Union Pacific Company. He declined, on advice of counsel, to answer. He also declined to state whether certain stocks were bought by him and his associates, directors of the Union Pacific, for the purpose of selling them to that company.

These questions were asked on account of their bearing upon the rates and practices of the Union Pacific Company. They were asked not merely for the purpose of general information under Section 12 of the act as the basis for recommending legislation to Congress, but also because of their bearing upon rates, fares and charges. The briefs of counsel in this case are illuminating. It appears from them that counsel for the Commission cited the *Brimson* case, 154 U. S., 447, *Texas Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 438; *I. C. C. v. Ry. Co.*, 167 U. S., 506; the *Baird* case, 194 U. S., 25, the *Reichmann* case, 145 Fed., 235; and others of similar import. The Commission contended strenuously that the purchase of these stocks by the Union Pacific Company, being a capital investment of that company against which bonds were issued and made a charge upon its road, had a direct bearing upon the rates charged. Counsel called attention to the holding in *Smyth v. Ames*, 169 U. S., 546, where the court said:

"We hold that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. * * * And in order to ascertain that value, the capital cost of construction, the amount expended in permanent improvements, the

amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case."

Counsel for the Commission also quoted as follows from the opinion in *San Diego v. National City*, 174 U. S., 757:

"The basis of calculations suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used by the public. The property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant, may be in excess of the real value of the property. So that it cannot be said that the amount of such bonds should in every case control the question of rates although it may be an element in the inquiry as to what is, all the circumstances considered, just both to the company and to the public."

It was urged in behalf of the government that

the fairness of these investments, whether made by and through the influence of directors and officers who owned the stocks dealt in and were dealing virtually with themselves, whether made for an honest and fair consideration, etc., had a vital bearing upon the subject of rates. Questions along this line were asked not merely of Mr. Harriman, but also of Mr. Kahn, a director of the Union Pacific.

An examination of the briefs filed by counsel for these witnesses will show they took the position that the Commission was without power to compel the attendance and testimony of witnesses except in relation to some specific duty or prohibition imposed upon common carriers subject to the act by the provisions of the first seven sections thereof—such as prohibitions of undue discriminations, unreasonable rates, pooling, etc. They argued that the power in question was confined to evidence bearing upon the positive regulations made by Congress for the benefit of shippers, and did not extend to the administrative and inquisitorial provisions of the acts designed to secure information as the basis of recommendations for additional legislation, etc. While the Commission might inquire into the reasonableness of a rate or into discriminations, yet no power was given to inquire into the private business of individuals or corporations selling property to railroads or performing services for

them. This contention was made with great clearness and earnestness. On page 34 of the brief filed in this court by Mr. Hines on behalf of the witness Kahn, it was said:

"The Commission insists upon the letter of the provision that it 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions' of the act. *We likewise invoke the letter of that authority* and say that it relates to the business of those with whom the carrier does business. Every purchase by a railway company of labor, and every purchase or sale by such company of property of any character, whether land, equipment or material, stocks or bonds, and every borrowing of money by it is the business of the railway company; but to every such transaction there is another side which equally constitutes the business of the person with whom the railway company deals. The private side of these transactions is of the deepest interest to the railway company, but such fact does not make the business of the person with whom the railway company deals its business. An authority to inquire into the business of the corporation, and nothing more, is not an authority to go beyond the corporation's side of these transactions and into the other side, involving the affairs of the laborers who work for the corporation or of the private institutions which sell or rent or loan to the corporation or which buy from the corporation. * * *

There is nothing, however, in the act to regulate commerce which confers upon the Commission the power or duty to investigate the management of all these phases of the railroad business. *Whether the railroad companies are unbusinesslike or improvident, or unjust or oppressive in their relations to labor, or to persons supplying materials or supplies or equipment, or to investors or stockholders, is no concern of the act.* The subject matter of the act is the relation between the carriers and the shipping public. In the light of these considerations the Commission's powers must be construed. * * *

The carrier's operating expenses and capital disbursements are within the scope of the Commission's investigating powers, because bearing upon the questions of rates and facilities for the shipping public which arise under the act; but the wisdom, policy and details of the business transactions which produced these operating expenses and capital disbursements are wholly outside of the subject-matter of the act and of the Commission's investigating powers.

At the time of the passage of the Act to Regulate Commerce, and ever since, the interstate railroad business of this country has been conducted principally by corporations created by the states. These corporations have had such powers as the states saw fit to give. Many of these corporations have had powers to engage in other sorts of

business in addition to the business of common carriers. *The Act to Regulate Commerce does not seek to prevent this, and contains nothing which evinces a purpose to entrust to the Commission any general administrative power of inquiry into those forms of business engaged in by railroads other than the business of carrier.* The Commission's counsel declare that the Union Pacific was acting not merely in the transportation business, but 'as a great investment company conducting a stock investment business purely for gain.' This investment business was authorized by the State of Utah and was not prohibited or in the slightest measure regulated by the Act to Regulate Commerce. No jurisdiction whatever respecting this investment business was conferred upon the Commission."

Mr. Milburn, in his brief in behalf of the witness Harriman said (page 55):

"What property acquired by a carrier corporation cost its vendor can never be a material inquiry with respect to rates. Because rolling stock, steel rails and supplies are property used in the business of transportation would that justify an inquiry into their cost to the manufacturer to show his profits, and that on the basis of his profits their cost to the company was excessive? If either were excessive the value of the property which may be an element in fixing rates is not thereby in any way affected."

Again the same counsel said (pages 87-88):

"It is obvious that if the power exists there is no practicable limit to such inquiries. Congress or the Commission could then require miners of coal to disclose the cost of coal sold railroad companies; require manufacturers of rolling stock and of all kinds of materials and supplies used in constructing, maintaining and operating railroads to disclose their profits to ascertain whether interstate carriers were paying more or less than they should pay for fuel and materials; and could inquire into the business of all shippers of interstate commerce to ascertain whether in view of their profits, they could pay higher, or should be allowed lower, rates for transportation. The taxation of incomes and inheritances, not so much to raise revenue for governmental purposes as to secure a more equal distribution of wealth, has been suggested. Has Congress itself, or through a committee, the power under the guise of obtaining information to aid it in framing a law taxing incomes and inheritances, to coerce testimony as to the wealth of particular individuals and how they obtained it. Or, if about to engage in a revision of the tariff would it have the power to coerce testimony on an investigation in aid of that purpose with respect to the contracts, profits, capitalization or financial condition of manufacturers? Or, if it had power to enact a uniform divorce law, could it coerce the testimony of indi-

viduals as to their divorces, why they had obtained them and the circumstances under which they were obtained? No one will seriously contend for such a power, and yet it would exist if it be a sound proposition that the power to compel testimony extends to every subject concerning which there is the power to legislate and to every matter bearing on any such subject."

The issue now before the court could hardly have been more squarely raised and more fairly met and argued than it was in the Harriman case. Note that the Government in that case had already received full information concerning the cost of these stocks to the Union Pacific Company, just as here all the relations between Armour Car Lines and the railway companies have been fully disclosed. But the Government in the Harriman case insisted, as it does here, upon going further and inquiring into the cost to the vendor, his possible profits, etc. The court denied the Commission's power to go to that length. It sustained the position taken by counsel for the witnesses. Mr. Justice Holmes delivering the opinion of the court, referred to "the enormous scope of the power asserted for the Commission," and stated that the power, if it existed, was "unparalleled in its vague extent. * * * No such unlimited command over the liberty of all citizens ever was given,

so far as we know, in constitutional times to any commission or court."

After intimating that the power of Congress to confer any such authority might well be questioned, Mr. Justice Holmes proceeded (pages 418-420):

"Whatever may be the power of Congress, it did not attempt, in the act of February 4, 1887, c. 104, 24 Stat., 379, to do more than to regulate the interstate business of common carriers, and the primary purpose for which the Commission was established was to enforce the regulations which Congress had imposed. The earlier sections of the statute require that charges shall be reasonable, prohibit discrimination and pooling of freights, require the publication of rates, and so forth, in well-known provisions. Then, by Sec. 11, the Interstate Commerce Commission is created, and by Sec. 12, as amended by later acts, the Commission has 'authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this

act.' District attorneys to whom the Commission may apply are to institute and prosecute all necessary proceedings for the enforcement of the act and for the punishment of violations of it; and 'for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.' Then comes the provision to which we already have called attention, by which a witness could be summoned from Maine to Texas, and then follow clauses for enforcing obedience to the subpoena by an order of court and for taking depositions, which do not need statement. The Commission, it will be seen, is given power to require the testimony of witnesses 'for the purposes of this act.' The argument for the Commission is that the purposes of the act embrace all the duties that the act imposes and the powers that it gives the Commission; that one of the purposes is that the Commission shall keep itself informed as to the manner and method in which the business of the carriers is conducted, as required by Sec. 12; that another is that it shall recommend additional legislation under Sec. 21, to which we shall refer again, and that for either of these general objects it may call on the courts to require any one whom it may point out to attend and testify if he would avoid the penalties for contempt.

We are of opinion on the contrary that the purposes of the act for which the Commission may exact evidence embrace only complaints for violation of the act, and investigations by the Commission upon matters that might have been made the object of complaint. As we already have implied, the main purpose of the act was to regulate the interstate business of carriers, and the secondary purpose, that for which the Commission was established, was to enforce the regulations enacted. These in our opinion are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries at least, to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law.”

Referring more particularly to the power conferred by Section 21, the court said (page 421):

“If by virtue of Sec. 21 the power exists to summon witnesses for the purpose of recommending legislation, we hardly see why, under the same section, it should not extend to summoning them for the still vaguer reason that their testimony might furnish data considered by the Commission of value in the determination of questions connected with the regulation of commerce. If we did not think, as we do, that the act clearly showed that the power to compel the attendance of witnesses was to be exercised only in connection with the quasi-judicial

duties of the Commission, we still should be unable to suppose that such an unprecedented grant was to be drawn from the counsels of perfection that have been quoted from Secs. 12 and 21. We could not believe on the strength of other than explicit and unmistakable words that such autocratic power was given for any less specific object of inquiry than a breach of existing law, in which, and in which alone, as we have said, there is any need that personal matters should be revealed."

The application of the Harriman case to the pending matter is obvious. Armour Car Lines is not a common carrier, either by railroad or in any other sense. It is not a shipper, has no interest in freight rates, on either side of the transaction, and is not engaged in transportation. It leases cars to railroads, it sells ice to railroads, it furnishes refrigeration to railroads. It is in no different position from that of a manufacturer of lumber, or of steel rails, who sells his products to railroads. The only difference would be that such manufacturer would also be a shipper, whereas Armour Car Lines is not a shipper at all. The company has given the Commission a detailed statement of all property or service furnished or sold or leased to railroads, together with the prices received, and is willing to make that statement as detailed as may be necessary to satisfy the Commission. It objects,

however, to disclosing what it costs the company to build its cars and repair them, to build its ice houses, and to purchase and put up its ice. If Mr. Harriman and Mr. Kahn, themselves directors and officers of the Union Pacific Company, could not be required to disclose their connection with and interest in property sold to the railroad company, to tell whether they made a profit out of it, or whether it was sold to the company at a fair and reasonable price—then how can it be possible that an individual or corporation furnishing ice or cars or any other commodity or service to railroad companies can be compelled to disclose the cost of the material and service to him or to it. In the forceful language of Mr. Justice Holmes:

“No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times to any commission or court.”

The contention of the Government is from every aspect revolutionary. If the manufacturer of rails or ties or lumber or bridge materials must show not only the price he receives for his materials from a railroad company, but also the cost of such materials to him, where is the inquiry to end? The subject of costs and profits can be pursued, if at all, to the uttermost limit. The cost of rails involves the cost of mining and smelting the ore; the cost of lumber em-

braces the cost of the stumpage from which the timber was cut to make the lumber. Will any court open the door to the inquisitor to such an extent as this? Can it be that these remote fields of inquiry are to be turned over to an administrative board so that it may rove without limit through the intimate affairs of every considerable private business in the land?

The suggestion that the Commission desires to ascertain whether a certain shipper, Armour & Company, has received a rebate or discriminatory rate by and through the operations of Armour Car Lines does not find any support in the record; and if it did, there neither could be nor is there any objection to questions addressed to that particular matter. Not the orders of the Commission upon which this investigation is founded, nor the written inquiries submitted to Armour Car Lines, nor any of the questions asked the respondent upon the hearing, make any direct reference to this rebate matter. Respondent has never been asked whether Armour & Company has received a rebate or any discriminatory favor through the Armour Car Lines.

We have already pointed out the theory upon which the Commission originally proceeded as evidenced by its orders. The subjects laid down for investigation were stated to be: (1st) the allowances paid by carriers subject to the act for the use of private cars; (2nd) the practices gov-

erning the handling and icing of such cars, and (3rd) the minimum carload weights applicable to commodities shipped in such cars. It was proposed to determine whether such allowances, practices and minimum carload weights were unjust, unreasonable or unduly discriminatory. The court may scan this order, the written interrogatories and oral questions at the hearing in vain for any demand for information about rebates paid to Armour & Company through the Armour Car Lines. The petition does not allege that any such rebate has been given; it only states the Commission has concluded it is its duty to ascertain whether Armour & Company is controlling the Armour Car Lines and using it as a device to obtain concessions, etc. The answer denies that any such rebate device exists.

The answer further states:

“* * * That said Armour Car Lines has been at all times, and is now, ready and willing to furnish to said Commission full information concerning its contracts or arrangements with common carriers by railroad under which it furnishes and rents its said cars, sells ice, and its services in icing and re-icing cars at designated points to said common carriers, subject to the Act to Regulate Commerce; the nature of the service performed by it under such contracts and arrangements, the rate of compensation it receives from such carriers for its said cars, ice sold and services performed thereunder

and the amounts of compensation so received from said carriers, respectively, therefor; and that said Armour Car Lines has furnished all of such information pursuant to the orders and the requests of the Commission in this proceeding, when such requests for information have not been inseparably coupled with demands for other information to which it believes the Commission is not entitled in this proceeding."

Reduced to its lowest terms, the problem presented in this proceeding is this: The Commission has instituted upon its own motion an investigation into the affairs of private car lines. It has called upon Armour Car Lines, among others, for information. The company has supplied, and offered to supplement if necessary so as to insure completeness in that respect, information concerning all of its dealing with railroads; its contracts with the carriers and its charges are open to the Commission. Not satisfied with these disclosures, the Commission demands to know what profit, if any, the Car Line Company makes through its dealings with the carriers. What interest could the Commission have in learning whether an individual or corporation not a common carrier makes much or little by furnishing materials and services to a common carrier by railroad? Is not its interest confined to knowing what the railroad company subject to its jurisdiction pays? Can the court per-

mit the Commission to go further without raising up an inquisitorial power to which there could be no reasonable limit? If the Commission may investigate the costs and profits of the Armour Car Lines, it has an equal right to investigate the costs and profits of the steel company which sells rails, or the lumber company which sells ties, or the coal company which sells coal, to the railroad company.

Suppose the questions relating to costs and profits were answered. What legitimate use could the Commission make of the answers? Would the size of the company's profits as a whole be any test of the reasonableness of the charges which the railroad companies pay? This Court has indicated that it would have to answer the query in the negative. In *Cotting v. Kansas City Stockyards Co.*, 183 U. S., 95, the Court (opinion by Justice Brewer) said (page 95):

"Pursuing this thought, we add that the state's regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but by the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the

party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. He has a right to do business. He has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even with respect to those engaged in a quasi public service independent of legislative action. In any action to recover for an excessive charge, prior to all legislative action, whoever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered? As said by Mr. Justice Bradley in *Transportation Company v. Parkersburg*, 107 U. S., 691, 699:

‘It is also obvious that since a wharf is property and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what dispo-

sition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay the regular charges therefor; provided, always, that the charges are reasonable and not exorbitant.' ”

Apparently the Court regarded the question of profits and of the disposition thereof as having no proper place in an inquiry of the nature of that before us. The statement by Justice Bradley in *Transportation Co. v. Parkersburg*, could hardly be more emphatic.

It may be urged that even though Armour Car Lines is not a common carrier engaged in transportation within the meaning of the act, still, the nature of the service which it performs for the railroad companies places it in the position of an agent for such common carriers, and therefore, by some labyrinthine process of reasoning, gives the Commission the power to investigate all its affairs. A short answer to this suggestion is that the Car Line Company is not an agent in any sense. It is an independent contractor. It is not held out by the railroad companies to shippers as their agent. It has long been settled that a common carrier may contract in a private capacity just as any other corporation or individual may do for the furnishing of facilities and services in connection with the commerce which it carries on. A fair illustration is the line of cases holding that the stipulation for exemption

from liability for negligence where employes of express companies, etc., are injured, is valid. The ground of this holding is that the carrier is making an ordinary private contract with a person who does not occupy toward it the relation of passenger to carrier.

Baltimore & Ohio S. W. R'y Co. v. Boight,
176 U. S., 498.

N. P. v. Adams, 192 U. S., 440.

Long v. Lehigh Valley R. R. Co., 130 Fed.,
870.

It is worthy of remark that in these cases the express company and its messenger perform services directly connected with the transportation of goods. The messenger guards the property while it is in transit. Nevertheless, so far as he is concerned the railroad company is held to be not a common carrier, but only a private contractor differing in no essential respect from the ordinary person who contracts at arm's length with another.

The same rule that a common carrier by railroad may in a private capacity enter into contract relations with others, involving even the transportation of property, was strikingly enforced in *Santa Fe Ry. Co. v. Grant Bros.*, 228 U. S., 177. There the railway company entered into a contract with the construction company, by the terms of which the latter was to do the necessary grading for a branch line in course of

construction. The railway company agreed to transport the construction company's equipment at the rate of one cent per ton mile. This rate was less than the tariff rates. As a part of the same contract the construction company agreed that all risk or loss or damage should fall upon the construction company. Some of the equipment was destroyed by fire while in the hands of the railway company in course of transportation. A judgment in favor of the construction company, affirmed by the Supreme Court of Arizona, was reversed by this Court. The Court held inapplicable the rule that a railroad company cannot stipulate for immunity from liability for its own negligence. Mr. Justice Holmes, writing the opinion, declared that the railroad company in making the contract in question was acting outside the performance of its duty as a common carrier. He said (page 186):

"In constructing, improving or repairing its road, and in building its extensions and branches, the railroad company is providing facilities for its service as a common carrier, but of course is not acting as such. It may do the work itself, if it chooses, or it may make it the subject of contract with another."

The court proceeded to hold that the contract was subject to the same rules of construction and enforcement as applied to ordinary private agreements. These authorities are clear upon

the point that a common carrier subject to the act may make contracts for services and facilities connected with the commerce which it carries on, and that such contracts are to be construed and enforced in the same manner and in accordance with the same principles as in the case of ordinary contracts between private parties. They are utterly inconsistent with any theory that a person who enters into such contract relations with a carrier thereby becomes so far identified with the carrier as to be himself engaged in the work of a common carrier either as an agent or otherwise. If the Government's contention should be granted in this case, where could the line ever be drawn? If one who sells ice to a common carrier pursuant to contract arrangement assumes all the duties and obligations of the carrier to whom he sells and thereby renders his affairs subject to investigation, the same would be true of him who sells stationary or furniture to a railroad company for use in its general offices, or food supplies for use in the dining cars. We have found no decision which goes to the length required to satisfy the Government's demands in the pending controversy.

The decision in *United States v. Louisville & Nashville Railroad Company*, filed February 23rd, 1915, points out with great force the proper construction to be placed upon the Interstate Commerce Act with respect to the investigatory

powers of the Commission. The Government there sought a writ of mandamus to compel the company to give access to certain documentary data in its files. The defendant was, of course, a common carrier. The proceeding was under the authority of Section 20, which specifically confers jurisdiction upon the District Court to issue writs of mandamus commanding common carriers to comply with the provisions of the Act. It appeared that the Senate of the United States had passed a resolution directing the Commission to investigate and report upon various matters affecting the relations of the Louisville & Nashville Railroad to other carriers and the issuance of free passes by that company. The Commission accordingly began an investigation, in the course of which it demanded access to the accounts, records, memoranda and correspondence of the Louisville & Nashville Company both prior to and since August 28, 1906, the date when the Hepburn Act took effect. The demand was refused, and the writ was applied for. The principal defense turned upon the right of the Commission to demand access to the correspondence. The court held that the petition for the writ must be dismissed. It was first observed that according to the record, the proceedings and the demands for inspection were not conducted under the authority of Section 12, and reference was made to the Harriman case, 211 U. S. 407.

for the proper construction of that section. The court then quoted at length the provisions of Section 20 as amended by the Hepburn Act. In brief, that section provides that the Commission may "prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to the provisions of this Act"; that "the Commission shall at all times have access to all accounts, records and memoranda" so kept; and that "it shall be unlawful for such carriers to keep any other accounts, records or memoranda than those prescribed or approved by the Commission." Subsequent clauses prescribe penalties for failure to keep such accounts, records and memoranda or to submit them to the inspection of the Commission and its authorized agents or examiners. There are also penalties prescribed for making false entries, for destruction, mutilation or alteration of records, and for keeping any other accounts, records or memoranda than those prescribed or approved by the Commission. The opinion calls attention to the fact that the authority thus granted to the Commission by Section 20 is confined to "accounts, records and memoranda," and that correspondence is not mentioned. After setting forth that part of the Commission's report upon which Congress acted in amending the law in 1906, the court said:

"Reading these provisions of the act, there

is nothing to suggest that they were intended to include correspondence relative to the railroad's business. In recommending the passage of the act, the Commission did not suggest that it was essential to its purpose to have an inspection of the correspondence of the railroad. And, with its expert consideration of the questions involved and having clearly in mind the authority it was intended to secure, it can scarcely be supposed that the Commission would have confined its proposed amendment to the carefully chosen words 'accounts, records or memoranda,' and would have omitted the word 'correspondence,' if it had intended to include the latter. If we apply the rule of construction,—*noscitur a sociis*,—we find that all the provisions of the act as to the inspection of accounts have relation to such as are kept in the system of bookkeeping to be prescribed by the Commission. It would be a great stretch of the meaning of the term as here used, to make 'memoranda' include correspondence. The 'records' of a corporation import the transcript of its charter and by-laws, the minutes of its meetings—the books containing the accounts of its official doings and the written evidence of its contracts and business transactions. Certainly it was not intended that the Commission should prescribe the forms of correspondence, although it was given the power to prescribe the forms of all accounts, records and memoranda subject to the provisions of the act.

* * *

There is nothing from the beginning to the end of the section to indicate that Congress had in mind that it was making any provisions concerning the correspondence received or sent by the railroad companies. The primary object to be accomplished was to establish a uniform system of accounting and bookkeeping, and to have an inspection thereof. If it intended to permit the Commission to authorize examiners to seize and examine all correspondence of every nature, Congress would have used language adequate to that purpose. A sweeping provision of that nature, attended with such consequences would not be likely to have been enacted without probable exceptions as to some lines of correspondence required to be kept open and subject to inspection upon demand of the agents of the Government. *

* * * * *

How far such a demand as embodied in this petition can be permitted within the constitutional rights set up by the defendant, we do not need to consider, as we do not think that the section of the act of Congress under which the demand was made authorizes the compulsory submission of the correspondence of the company to inspection. It is true that correspondence may contain a record, and it may be the only record of business transactions, but that fact does not authorize a judicial interpretation of this statute which shall include a right to inspection which Congress did not intend to authorize."

In the Louisville & Nashville case, which arose under Section 20, as in the Harriman case, which arose under Section 12, the court again denied the right of the Commission to arrogate to itself a sweeping inquisitorial power. As in the former case, the Commission's authority under Section 12 was confined strictly to investigations concerning specific breaches of existing law, so in the Louisville & Nashville case, its authority under Section 20 was limited, even where the affairs of a common carrier subject to the act were concerned, to the inspection of only such records as the act clearly specified. These decisions supplement each other. Together they mark the emphatic refusal of this Court so to construe the Interstate Commerce Act as in effect to grant a roving commission. In the one case the private affairs of individuals who had dealt with carriers subject to the act were protected; and in the other case the general principle was applied to defeat an attempt to delve into the affairs of a carrier further than the act specifically provided.

The pending matter was argued and finally submitted to Judge Landis in February, 1914. The decision of the lower court in the Louisville & Nashville case was filed in March, 1914. While this litigation was pending, the Commission was endeavoring to procure by specific legislation the precise authority which its attorneys were con-

tending that the Commission already possessed. The so-called Railroad Securities Bill was a measure introduced in Congress at the instance of the Commission. The bill as passed by the House, provided that Section 20 of the act should read in part as follows:

"The commission shall at all times have access to all accounts, records, memoranda, correspondence, documents, papers, and other writings, regardless of the dates thereof, relating to financial transactions of, for, or with said carriers, and kept or preserved by or for, or in the custody or under the control of—

(a) Any carrier subject to this Act;

(b) Any director, stockholder, officer, agent, attorney, employee, receiver, or operating trustee of said carrier;

(c) Any other person, persons, corporation, joint-stock company, or corporate combination having, or having had, any financial transactions with or for said carrier.'"

In May and June, 1914, members of the Commission appeared before the Senate Committee on Interstate Commerce, and earnestly pleaded for the retention of these provisions. As an appendix to this brief we have printed passages from the official record of hearings before the Committee bearing upon the subject. It is clear from the statement of Commissioner Hall, for example, that he and his associates looked upon the proposed measure not as a clearer definition of a power hitherto imperfectly or ambiguously

expressed in the act, but as a grant of an altogether new and wider power not now held by the Commission. The understanding of Congress was exactly to the same effect. The House of Representatives placed in the bill the provisions above quoted. The Senate Committee, after hearing the Commissioners, deliberately cut down these provisions by eliminating all language which could be construed as a grant of power to inquire into the private affairs of persons or corporations having dealings with carriers subject to the act. The action of the Senate Committee is thus shown:

As Passed by the House.

"The commission shall at all times have access to all accounts, records, memoranda, correspondence, documents, papers and other writings, regardless of the dates thereof, relating to financial transactions of, for, or with said carriers, and kept or preserved by or for, or in the custody or under the control of—

(a) Any carrier subject to this Act;

(b) Any director, stockholder, officer, agent, attorney, employee, receiver, or operating trustee of said carrier;

(c) Any other person, person, persons, corporation, joint-stock company, or corporate combination having or having had, any financial transactions with or for said carrier."

As Reported by the Senate Committee.

"The commission shall at all times have access to all accounts, records, memoranda, correspondence, documents, papers and other writings of the carrier, regardless of the dates thereof, relating to ~~financial~~ transactions of, for, or with said ~~carriers~~, and carrier kept or preserved by or for, or in the ~~care~~, custody or ~~under the~~ control of said carrier, or of any person for said carrier;

(a) Any carrier subject to this Act;

(b) Any director, stockholder, officer, agent, attorney, employee, receiver, or operating trustee of said carrier; provided, that all communications between attorney and client, giving or seeking professional advice, shall be deemed privileged.

(c) Any other person, persons, corporation, joint stock company, or corporate combination having, or having had, any financial transactions with or for said carrier."

III.

THE DEMANDS INVOLVED IN THIS PROCEEDING DO NOT FALL WITHIN THE SCOPE OF THE COMMISSION'S ORDERS.

The points heretofore discussed have to do with the power of the Commission to exact the information in question. Our contention is that under the law and the Constitution, the Commission has no jurisdiction or authority whatever to invade the private affairs of a corporation which is not a common carrier by railroad engaged in transportation within the meaning of the Interstate Commerce Act. We now desire to direct the Court's attention to the proposition that even if the requisite constitutional and statutory warrant could be found, still the Commission has not by its orders laid any proper foundation for the exercise of such authority. This investigation was begun on the Commission's own motion. The order referred to no specific violation of law and contained no suggestion that any device for giving rebates was to be the object of inquiry. The investigation was directed on the face of the order against common carriers by railroad. While it might be said that the order contemplated an examination into the relations between such common carriers by railroad and private car line companies leasing cars to railroads and performing the service of icing

cars for railroads, nevertheless the Commission did not by its order give the slightest indication that the relations between private car lines and other companies not common carriers were to be inquired into.

Therefore, while the points heretofore suggested do not rely for any of their force upon the form of order made by the Commission, the argument which we now propose to make does take into account the scope and tenor of the orders.

As pointed out by the decision in the Harri-man case, the first seven sections of the act embody the substantive law on the subject of the regulation of carriers. The remaining sections relate to the machinery of enforcement and the matter of remedy, and may be said, therefore, to furnish the adjective law on the subject. Section 11 creates and establishes the Interstate Commerce Commission; Section 12 empowers the Commission to "inquire into the management of the business of all common carriers subject to the provisions of this act" and "to keep itself informed as to the manner and method in which the same is conducted," and "to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created." For the purposes of the act the Commission is authorized to require the attend-

ance and testimony of witnesses, etc., "relating to any matter under investigation." It is further provided "that in case of contumacy or refusal to obey a subpoena issued to any carrier subject to the provision of this act, or other person," the Commission may "issue an order requiring such common carrier or other person to appear before said Commission * * * and give evidence."

Section 13 provides for the filing of complaints against common carriers subject to the act, complaining of "anything done or omitted to be done" by them. The Commission is directed to investigate any such complaints. Then follows this provision:

"And the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the

case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Section 15 provides that "whenever, after full hearing upon a complaint made as provided in Section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative * * * the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property * * * or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of the provisions of this Act the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates," etc.

Section 15 also contains the following provision:

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used

therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

The manifest purpose of the later sections of the Act is, as intimated by the court in the *Harriman* case, to provide the necessary penalties and machinery to deal with the specific violations of the law dealt with in the first seven sections. Any specific departure from the rule of uniformity there laid down was to be corrected by the Commission either on the complaint of some aggrieved party or by the Commission acting on its own motion. Whether proceeding on a complaint filed or proceeding on its own motion, the Commission's authority is confined to the investigation and correction of specific violations of the law. Such is the clear import of the *Harriman* decision. The Commission has not any vague, indeterminate authority to investigate generally and for any purpose that may occur to it as desirable, even the affairs of common carriers subject to the act. It may not, as was decided by

the court, investigate generally for the purpose of getting information on which to base recommendations for further legislation. See also *The Louisville and Nashville decision*.

It may therefore be safely concluded that in any investigation on the Commission's own motion, the order lying at the foundation of such inquiry virtually takes the place of a complaint and should embody the limits and scope of the proposed inquiry. Otherwise there will be no means of knowing whether the Commission was proceeding in excess of its authority, as was held in the *Harriman case*, or not.

In this proceeding the Commission did make orders defining the scope of the proposed inquiry. Although the proceeding was entitled "*In the Matter of Private Cars*," the investigation was declared to be one instituted by the Commission "on its own motion into and concerning the practices of all carriers by railroad subject to the act." The "practices" referred to were specifically defined as three: (1) Allowances paid by carriers subject to the act for the use of private car; (2) Practices governing the handling and icing of such cars; and (3) Minimum car-load weights applicable to commodities shipped in such cars. The Commission declared its object to be the determination of whether the practices thus defined or any of them were "unjust, unreasonable or unduly discriminatory or other-

wise in violation of said act." All carriers by railroad subject to the act were made parties respondent, but no mention in the order was made of car line companies. The original order was broadened only in one respect, namely, by providing in the order of September 15, 1913, that because it appeared that certain individuals, etc., owning or operating cars, vehicles and instrumentalities and facilities of shipment are necessary parties, such individuals and corporations were thereby made parties respondent. This action was taken after Armour Car Lines had declined to give the information concerning its profits and cost of doing business. We respectfully submit that the courts are bound to adopt the orders of the Commission as their guide in determining the scope of the investigation, and that on their face these orders lay no foundation whatever for the questions which the respondent has declined to answer. The allowances paid by the carriers for the use of cars owned by Armour Car Lines have been fully disclosed. There is nothing whatever about the practices governing the handling and icing of the cars which the Commission has not received. The manner of doing the business, the list of stations, prices paid, etc., are all matters which have been extensively gone into. There is no controversy about minimum carload weights. We fail to see how there has been the slightest

failure to furnish the Commission all of the information which could fairly be demanded within the limits of any inquiry under its own order. What Armour Car Lines pays for its ice, what it costs the company to manufacture and repair its cars, whether its profits are large or small—none of these matters can have any material bearing upon the particular practices of common carriers subject to the act which are made the objects of investigation by the orders.

But it may be argued that the petition filed in this court has altered the situation in this respect, and that the Commission is now seeking to investigate the subject of possible rebates to Armour & Company. The Commission avers, in substance, on page 7 of the petition that at the time of the institution of the proceeding it entertained an *arrière pensée* to the effect that it was its duty to ascertain whether through stock ownership or some other means to the Commission unknown Armour & Company was controlling Armour Car Lines and using it as a device to obtain concessions from the published rates, etc. The averment involves a rather curious anachronism. It states that "prior to the institution by it of the proceeding hereinafter mentioned, said Commission, by reason of the premises herein described and because of evidence adduced at said hearing, concluded it was its duty," etc. If the Commission had this mental reservation at the time it

instituted the proceeding, why was nothing said about Armour & Company and the elusive rebate in the order? The averment, however, says that this mental, unrecorded conclusion of the Commission was also arrived at "because of evidence adduced at said hearing." Query: Just when did the suspicion concerning the possible rebate first enter the mind of the Commission? If it was induced by evidence brought out at the hearing held under the orders, then the conclusion could not have been arrived at prior to the institution of the proceeding by the making of the orders.

We deny the right of the Interstate Commerce Commission either to institute a proceeding nominally for one purpose but with another unexpressed purpose in mind, or to institute a proceeding for one purpose and then prosecute it with another end in view. If the sort of thing which the Commission is here attempting can be done, then all of the dangers pointed out by Justice Field in the Pacific Railway Commission case and by Mr. Justice Holmes in the Harri-man case are real and imminent, and there can be no protection against that vague, unparalleled power and unlimited command over the liberty of the citizen which Mr. Justice Holmes asserts has not been granted either to commissions or to courts in constitutional times. The Commission has but to make a formal order for investi-

gation within its acknowledged powers. It may then prosecute its inquiries without reference to the order, and when met with a refusal to testify, the Commission may go to court and change the entire character and scope of the investigation by alleging that by some recondite process in the nature of unexpressed conclusion, the Commission desires the evidence in question for some purpose not theretofore made known to the interested parties. Must a witness who is sworn in any inquiry instituted by the Interstate Commerce Commission be given to understand that, regardless of the order lying at the foundation of the proceeding, he may be called upon to testify concerning any matter as to which the Commission might have power under the Interstate Commerce Act to inquire into under any other order which it might make? Take, for example, any general investigation into the management and affairs of a railway. May the Commission summon all persons who sell lumber, engines, cars or supplies of any nature to the railway company under investigation and require them to disclose the manufacturing costs of the supplies which they furnish? Must the private books of such persons be laid before the Commission? And when any such person refuses compliance, may the Commission come to the court for assistance and assert that the vendor of supplies happens also to be a shipper and that the real pur-

pose of the Commission is to find out whether a rebate has been given? If the pretext of a search for rebates—advanced as an obvious afterthought—can be made to serve this purpose, then the private affairs of that exceedingly large class of shippers who directly or indirectly sell materials or supplies or services to carriers are wholly at the mercy of the Commission.

IV.

THE RIGHT OF APPEAL.

This appeal was allowed by a justice of this court after Judge Landis had refused to allow it. The Commission contends that the decree of the lower court is not appealable, and that if the appellant desires to have his rights passed upon in this court, he must place himself in contempt of the order made by the lower court, and appeal from a judgment in contempt proceedings.

It is important to distinguish carefully the two proceedings involved; first, the proceeding instituted by the Interstate Commerce Commission on its own motion, and, second, the case brought under Section 12 of the Interstate Commerce Act against the witness in the United States District Court. The proceeding before the Commission was an investigation by a non-judicial body. It had no power to compel the witness to answer; therefore Congress provided for a suit in the name of the Interstate Commerce Commission *against the witness* and authorized the suit to be prosecuted in any District Court in the United States. This, therefore, is a case against the defendant Ellis, involving grave questions affecting his constitutional rights. The case is entitled "Interstate Commerce Commission v. Frederick W. Ellis." It

is a controversy between the Commission and Ellis.

The investigation into the subject of private cars was not brought in the District Court; that investigation was and still is pending before the Commission. The powers of the District Court were invoked only to aid the Commission in the investigation. The court is invested with jurisdiction solely for that purpose. Section 12 of the Act to Regulate Commerce, after conferring authority upon the Commission to require by subpoena the attendance and testimony of witnesses, states:

“and in case of disobedience to a subpoena, the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provision of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person issuing an order requiring such common carrier *or other person to appear before said Commission* (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey

such order of the court may be punished by such court as a contempt thereof."

The answer of the respondent challenges the right of the Commission to require the testimony and evidence in question, and respectfully prays that the petition be denied. The order of the court directs the respondent to appear and answer. No doubt it is a final order. It grants the prayer of the petition in toto. So far as the parties are concerned, the issues formulated by the petition and answer are determined. The court has passed upon the entire controversy which has been pending before it. The case is ended. The petition has been heard and has been granted. There is nothing more for the court to do. The situation is different from that existing in an ordinary equity suit, where testimony is being taken either in open court or before an examiner, and the recalcitrant witness is brought before the court wherein the suit is pending. There the order of the court compelling obedience to its own subpoena is like any other direction given to a witness in the course of a trial. There is no separate and distinct proceeding against the witness until and unless he places himself in contempt by refusing to comply with the court's orders. In that event the contumacious witness ceases to be a mere outsider giving testimony in a proceeding between other parties, and may become himself a party

defendant to a direct proceeding against him based upon his contumacious conduct. Then, and then only, does the witness become a party with the right of appeal.

Here we have a civil action provided for by statute, brought by the Interstate Commerce Commission against the defendant Ellis. There is no other proceeding pending in the court. His right to withhold information is the issue before the court. There is nothing ancillary in the ordinary sense about it. Ellis appears, pleads, defends his position, and claims the right to appeal from an adverse determination.

A direct appeal to this Court is provided for by Section 3 of the act of February nineteenth, 1903, entitled "An Act to Further Regulate Commerce with Foreign Nations and Among the States" (32 Statutes at Large 847) and by the statute to expedite cases brought under the Anti-trust Act and the Interstate Commerce Act approved February eleventh, 1903 (32 Statutes at Large 823).

The first of these statutes provides:

"Provided, That the provisions of an act entitled 'An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved

February fourth, eighteen hundred and ninety-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,' *shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.*"

The Expediting Act (Section 2) provides that appeal shall be taken within sixty days, direct to the Supreme Court of the United States.

That the decree is a final one from which an appeal lies direct to the Supreme Court of the United States is established.

Interstate Commerce Commission v. Brimson, 154 U. S. 447;

Interstate Commerce Commission v. Baird, 194 U. S. 25;

Harriman v. Interstate Commerce Commission, 211 U. S. 407.

The Brimson case came before the Circuit Court of the United States for the Northern District of Illinois on a petition filed by the Interstate Commerce Commission under Section 12 of the Act to Regulate Commerce. The petition invoked the aid of the court in requiring the attendance and testimony of the respondent Brimson in a proceeding before the Commission. The Circuit Court dismissed the petition on the ground that Section 12 of the Act was unconstitutional because it imposed upon the federal

court non-judicial functions. The Commission appealed, and this Court reversed the judgment whereby the petition was dismissed. In the opinion by Justice Harlan the court said that

“the fundamental inquiry on this appeal is whether the present proceeding is a ‘case or controversy’ within the meaning of the constitution. The Circuit Court, as we have seen, regarded the petition of the Interstate Commerce Commission as nothing more than an application by an administrative body to a judicial tribunal for the exercise of its functions in aid of the execution of duties not of a judicial nature, and accordingly adjudged that this proceeding did not constitute a case or controversy to which the judicial power of the United States could be extended.”

The Court held that the proceeding was not merely ancillary or advisory, but was one between the Commission on the one part and the respondent on the other, involving distinct issues. The Court said (page 487):

“The present proceeding is not merely ancillary and advisory. * * * The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. And that judgment may be enforced by the process of the Circuit Court.

Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the government, rests upon the defendants, cannot be directly enforced except by judicial process. One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of Sanborn's case, will be a 'final and indisputable basis of action,' as between the Commission and the defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed

upon it by Congress in execution of a power granted by the Constitution."

At the conclusion of the opinion the Court said (page 489):

"We are of opinion that a judgment of the Circuit Court of the United States determining the issues presented by the petition of the Interstate Commerce Commission, and by the answers of the appellees, will be a legitimate exertion of judicial authority in a case or controversy to which, by the Constitution, the judicial power of the United States extends. A final order by that court dismissing the petition of the Commission, *or requiring the appellees to answer the questions propounded to them*, and to produce the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which must be enforced by judicial process."

As the Court here said, the judgment requiring Ellis to answer the questions and to produce the books and papers finally disposes of his rights. It is the end of the proceeding in that court. When he appears before the Commission he cannot again claim his constitutional exemptions. Why should he not have the same right which the Government has? The rights denied him are as vital to his interests as were the rights denied the Government in the *Brimson* case.

The Baird case (194 U. S. 25) also came before the court on a petition filed by the Interstate Commerce Commission under Section 12 of the Act to Regulate Commerce. There again the respondent was a witness who had refused to answer and produce evidence in a proceeding before the Commission. The question raised was as to the power of the Commission to go into certain matters. The Circuit Court for the Southern District of New York dismissed the petition on the ground that the information called for related to the private business of persons not parties to the proceedings before the Commission, and was not relevant to the subject matter of the investigation. The Supreme Court reversed this holding.

The right of appeal direct to the Supreme Court was specifically raised by a motion to dismiss the appeal. The Court held that the appeal was authorized by the proviso in the act of February 19, 1903 (32 Statutes at Large, 849), extending the provisions of the act of February 11, 1903, (United States Compiled Statutes 1901, Supplement of 1903, page 376) "*to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.*" In the opinion by Mr. Justice Day the Court said (pages 35 and 36):

"A motion is made to dismiss the appeal upon the ground that no direct appeal lies to

this court from the order of the Circuit Court. The act of February 19, 1903, (Comp. Stat. 1901, Sup. for 1903, p. 365) to further regulate commerce with foreign nations and among the States, Sec. 3, closing paragraph, enacts, 'Provided, That the provisions of an act, entitled 'An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and ninety-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three, 'shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.'

The second section of the act of February 11, 1903, (Com. Stat. of 1901, Sup. for 1903, p. 376) provides, "That in every suit in equity pending or hereafter brought in any Circuit Court of the United States under any of said acts (having reference to the anti-trust act of 1890 and the act to regulate commerce mentioned in the preceding section) wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within sixty

days after the entry thereof.' * * *

The provision in the statute under consideration being intended to enlarge rather than limit the application of previous terms should not receive so narrow a construction as to defeat its purpose. It extends to the terms of the act of February 11, 1903, to '*any case*' brought under the direction of the Attorney General in the name of the Interstate Commerce Commission. The second section of the act of February 11, has reference, it is true, to a suit in equity under certain acts wherein the United States is complainant, and the argument is that the extension of the terms of this act in the act of February 19 is only to suits in equity. But for some reason Congress, in the act under consideration, saw fit not to limit the terms of the extension to suits or proceedings provided for in section 3 of the act of February 19, or to suits in equity, but broadly extended the rights and privileges of the act of February 11, to '*cases*' of the character designated. We cannot assume that this use of the broader term was without purpose. Before the passage of this act this court had held that a petition filed under section 12 of the interstate commerce act against a witness duly summoned to testify before the commission, to compel him to testify or to produce books, documents and papers relating to the matter in controversy, makes a case or controversy to which the judicial power of the United States extends. Inter-

state Commerce Commission v. Brimson, 154 U. S. 447. The object of construction, as has been often said by the courts and writers of authority, is to ascertain the legislative intent, and, if possible, to effectuate the purposes of the lawmakers. We cannot read these statutes without perceiving the manifest purpose of Congress to facilitate the disposition of cases brought under the direction of the Attorney General to enforce the provisions of the anti-trust and interstate commerce statutes. The present proceeding is not merely advisory to the commission, but, as was said in *Interstate Commerce Commission v. Brimson*, *supra*, a judgment rendered will be a final and indisputable basis of action as between the commission and the defendants, and furnish a precedent for similar cases. While it has for its object the obtaining of testimony in aid of proceedings before the commission, it is evident that important questions may be involved touching the power of the commission and the constitutional rights and privileges of citizens. Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort."

The Harriman case, 211 U. S. 407, was likewise a petition filed under Section 12 of the Interstate Commerce Act to invoke the aid of the Court in requiring a recalcitrant witness to

answer and produce evidence in an investigation before the Commission. The Court directed certain questions to be answered and refused to require the witness to answer other questions. Both sides appealed direct to the Supreme Court. The appeals were allowed without question, and the case was determined by this Court on the merits. Although three justices dissented and Mr. Justice Day wrote a vigorous dissenting opinion, no objection to the Supreme Court's jurisdiction of the appeal was made.

The distinction between a proceeding under Section 12 of the Act to Regulate Commerce and a step taken in a pending action before the Court to compel a witness to answer is illustrated by the cases of *Nelson v. United States*, 201 U. S. 92, and *Alexander v. United States*, 201 U. S. 117. Both of these cases arose from attempts to compel the production of evidence in a suit pending in the United States Circuit Court between the United States and the General Paper Company and others—the so-called Paper Trust suit. Both Alexander and Nelson appeared before the Court's examiner in the equity suit in response to the subpoena. Upon their refusal to testify and produce evidence, the hearings before the examiner were adjourned and the parties went before the Court. In each case the witness was directed to answer. In the Alexander case an appeal was taken to the Supreme

Court from the order requiring him to answer. In the Nelson case the Court refused to allow an appeal from the order, and the matter came before the Supreme Court on a writ of error to review a judgment in contempt proceedings which were instituted against Nelson and his associates based upon their refusal to obey the Court's order. In the Alexander case the Supreme Court discussed the right of appeal and held that the appeal must be dismissed. In the opinion of the Court by Mr. Justice McKenna, it was said (pages 121-122):

"To justify the appeals, appellants contend that the orders of the circuit court constitute practically independent proceedings and amount to final judgments. To sustain the contention, *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, and *Interstate Commerce Commission v. Baird*, 194 U. S. 25, are cited.

Those cases rested on statutory provisions which do not apply to the proceedings at bar, and, while there may be resemblances to the latter, there are also differences. In a certain sense finality can be asserted of the orders under review, so, in a certain sense, finality can be asserted of any order of a court. And such an order may coerce a witness, leaving to him no alternative but to obey or be punished. It may have the effect and the same characteristic of finality as the orders under review, but from such a ruling it will not be contended there is an

appeal. Let the court go further and punish the witness for contempt of its order, then arrives a right of review, and this is adequate for his protection without unduly impeding the progress of the case. Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court? Testimony, at times, must be taken out of court. In instances like those in the case at bar the officer who takes the testimony, having no power to issue process, is given the aid of the clerk of a court of the United States; having no power to enforce obedience to the process or to command testimony, he is given the aid of the judge of the court whose clerk issued the process, and if there be disobedience of the process, or refusal to testify or to produce documents, such judge may 'proceed to enforce obedience * * * or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court.' Sections 868, 869, Revised Statutes. This power to punish being exercised the matter becomes personal to the witness and a judgment as to him. Prior to that the proceedings are interlocutory in the original suit. This is clearly pointed out by Circuit Judge Van Deventer, disallowing an appeal from an order like those under review. In the case of *Nelson v. United States*, (No. 490), in error to the circuit court of the United

States for the District of Minnesota. The learned judge said:

'I am of opinion that the mere direction of the court to the witnesses to answer the questions put to them and to produce the written evidence in their possession is not a final decision; that it more appropriately is an interlocutory ruling or order in the principal suit, and that if the witnesses refuse to comply with it and the court then authorizes its authority either to punish them or to coerce them into compliance that will give rise to another case or cases to which the witnesses will be parties on the one hand and the Government, as a sovereign vindicating the dignity and authority of one of its courts, will be a party on the other hand. I have no doubt that a judgment adverse to the witnesses in that proceeding or case will be a final decision and will be subject to review by writ of error, but not by appeal. My opinion is also that the parties to the principal suit cannot appeal or obtain a writ of error from that decision.' "

Thus the distinction between an original and independent proceeding under Section 12 of the Act to Regulate Commerce and an ancillary order made in the course of a pending action was clearly brought out and enforced.

It was said in the *Brimson* case (page 489) that:

"A final order by that Court, dismissing the petition of the Commission, *or requiring*

the appellees to answer the questions propounded to them, and to produce the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which must be enforced by judicial process."

The judgment in this case is final unless appealed from within the time prescribed by statute. We submit that the allowance of the appeal was correct. If the appeal is now dismissed, the finality of the judgment of the lower court would be established and the appellant would be deprived of the benefit of a review of the case on the merits by this court. His rights will have been finally passed upon, and if at any future time, pursuant to the decree of the lower court, he should be called before the Commission, we fail to see how he could again raise any of the questions which were raised and determined in the case against him. The Government's contention that contempt proceedings furnish the only means of getting a review by this court cannot be sustained. Any attempt by Ellis to raise these questions again in any other proceeding between himself and the Commission would undoubtedly be met with the plea that the entire matter is *res judicata*. This court in the Baird case said:

"The present proceeding is not merely advisory to the Commission, but, as was said in *Interstate Commerce Commission v.*

Brimson, *supra*, a judgment rendered will be a final and indisputable basis of action as between the Commission and the defendants and furnish a precedent for similar cases."

V.

CONCLUSION.

We have endeavored, so far as possible, to confine our argument to the vital problem presented by the Commission's demand, considered from its broader aspect. Undoubtedly some of the preliminary questions which the respondent declined to answer would have been answered if counsel for the Commission had not frankly stated upon the hearing that it was the intention to go into all of the affairs of Armour Car Lines and that such questions belonged to a series of inquiries which would be directed to that end. There could be no mistake about the theory upon which the Commission was proceeding—that the Commission's inquisitorial powers with respect to common carriers by railroad extend and apply with equal force to the affairs of every company or individual which maintains contract relations with such carriers. We have already quoted the illustration given by counsel for the Commission in his argument in the lower court. It brings into clear relief the issue raised for the decision of this court. The Baldwin Locomotive Works manufactures and sells engines to railroads. The Baldwin Company is in no sense itself a common carrier. The Commission cannot regulate its charges for the locomotives which it sells.

Nevertheless, the contention is that in the exercise of its duties under the act the Commission may compel the Baldwin Company to disclose its manufacturing costs. The illustration is an apt one. The position of Armour Car Lines is not essentially different from that of the Baldwin Company. Our contention is that the claim made by the Commission goes beyond any power which has yet been conferred upon it. To pursue the illustration: If the Baldwin Company sells a locomotive to the Lake Shore Road, the Commission may, doubtless, require the road to disclose what it paid to the Baldwin Company. This is so because the road is a common carrier subject to the jurisdiction of the Commission. Its cost of doing business is clearly within the legitimate field of inquiry of any board having authority to investigate the company's affairs and regulate its charges to the public. It does not follow that because the Commission is thus concerned with the cost of the locomotive to the railroad company, it may also go back of the transaction between the railroad company and the Baldwin Company and insist upon knowing the cost of the locomotive to the latter. In no event could the Commission regulate the charge made by the Baldwin Company to the railroad. It could not compel the Baldwin Company to sell its locomotive to the railroad at a less price than that provided for in the contract, even if

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the Commission were satisfied that the Baldwin Company's profit on the transaction was excessive. It could not even order the railroad company to desist from the purchase on that ground. The Commission could only, in considering the charges which the railroad makes to the public, take into account its opinion that the company was paying too much for its locomotives.

Now, we are not concerned with the question of whether it may not from the point of view of public policy be desirable to extend the power of the Commission so that it might compel the sale to railroads of locomotives, cars, ties, and other materials at reasonable prices to be fixed by the Commission. All we assert is that legislation has not yet proceeded to this limit. The status of railroads as common carriers and the power conferred upon the Commission to investigate their affairs and regulate their charges make what the railroads pay out in the way of cost of materials and equipment a legitimate subject of investigation; but to go further and demand that the vendor of materials shall disclose his costs and profits involves a step which Congress has not up to this time ventured to take. It is exactly the step which Congress specifically refused to take a few months ago when the Railroad Securities Bill was under consideration. However useful and interesting such facts might seem to an administrative board dealing with

the interstate commerce problem, the far reaching consequences of the proposed action have evidently given pause to our legislators. Indeed, it is difficult to see where any legitimate limit could be placed if it be once conceded that the subject of costs might be pursued beyond the carrier itself. If the Commission should find, for instance, that the Baldwin Company was not making an exorbitant profit but should entertain the notion that it was paying too much for its steel from which the locomotives were made, then the same line of argument would justify the Commission in calling for the costs and profits of the various vendors of materials to the Baldwin Company. Clearly the contention now made by the Commission goes a step beyond what has yet been authorized, and the taking of this step involves a radical departure from the whole theory and purpose of the Act to Regulate Commerce as it now stands.

We respectfully submit that the final order and decree of the lower court should be reversed and that a decree should be entered dismissing the petition of the Interstate Commerce Commission.

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CORDENIO A. SEVERANCE,
ROBERT E. OLDS,
ALFRED R. URION,
CHARLES J. FAULKNER, JR.,
Solicitors for Appellants.

APPENDIX.

Extracts from proceedings before the committee on Interstate Commerce of the United States Senate, 63d Congress, 2d Session. Hearings on Bills Relating to Trust Legislation. June, 1914. Volume 1, page 516.

Senator LIPPITT. Would you feel that the commission should have authority, if they saw fit, in the exercise of their own judgment, to investigate the correspondence of anybody, anywhere?

Commissioner HALL. If necessary to get at the fact, yes; not their private correspondence, nor the correspondence of anybody, anywhere, with regard to anything, but with regard to the business, relating to the business transactions of or with these carriers.

Senator SAULSBURY. One difficulty is it would not be in the discretion of the commission as to what would be examined. When you sent one of your special examiners out he would go as far as he elected before he could be stopped by any legal process I know of. I do not think a responsible body like the Interstate Commerce Commission would ever give authority to any of its agents to make an investigation which probably could be reasonably objected to in an ordinary case. I think in the case of an attorney it is different. When your attorney got to examining many papers, either private papers of persons or the papers of corporations, they would go as far as they

pleased, and thinking they had the permission of the United States Government behind them they would go very far, indeed, according to my experience in cases.

Commissioner HALL. It is quite probable that they could, but it is a question whether they would.

Senator SAULSBURY. Oh, yes; I have seen them go into baskets containing the laundry of the wife of the man they were undertaking to investigate to see if there were not some papers there they wanted. That is an extreme case, of course.

Senator LIPPITT. Would not they be almost compelled to examine every piece of writing they came across to find out whether it had any reference or not to the investigation they were making?

Commissioner HALL. Well, common sense there, I think, would be a good guide, where a road keeps its records and accounts—

Senator LIPPITT. I am asking about a private individual.

Commissioner HALL. The same thing there. The chances are that if the road kept the accounts as it should, there would be no necessity of going into the accounts of private individuals.

Senator BRANDEGEE. Under this the roads have to keep their accounts as described by the act, and if they do so, why not put common sense into the act, and not leave it to the discretion of some special agent as to how far he can go.

Commissioner HALL. I quite agree with you that the act should be full of common sense, and it seems to me that our common sense teaches us that it is practically impossible to legislate so as to provide for every contingency. The Congress has recognized that when it has laid down certain principles like reasonableness or unreasonableness of rates, and left it to the commission in each individual case to determine whether the rate is reasonable or unreasonable.

Senator BRANDEGEE. I know, but in view of the fact that the Constitution of the United States has some language in it about unreasonable search of private persons and this act gives access apparently to the agent of the commission at all times to all accounts, records, memoranda, correspondence, and other documents, papers, and other writings, regardless of the dates thereof, kept by carriers subject to this act, relating to business transactions of, for, or with certain carriers and kept or preserved by or for or in the custody of or under the control of any director, stockholder, officer, agent, attorney, employee, receiver, or operating trustee of said carrier or any other person, corporation, joint-stock company, or corporate combination having any business transactions with or for said carrier, that certainly it would seem to me they authorize the commission to go into the office of anybody who had any business transaction with the railroad com-

pany and demand all his correspondence to be turned over to him; that is, all the correspondence of the business man who is not connected with the railroad at all, and may be some lumber contractor or other contractor, and such private individual is put into the position of having to put the agent out of his office, declining to comply with his request or standing suit, or else he has got to let the fellow take all the documents in his office. I wanted to know whether it was the intention to leave the thing in that situation?

Commissioner HALL. It is the intention to leave it in the situation as worded here, to have access to these accounts, relating to business transactions with or for said carrier.

Senator BRANDEGEE. Now, when the business man I speak of—not connected with the railroad at all, but a storekeeper who sold the railroad company—is visited by the field agent of the Interstate Commerce Commission, and the field agent demands to inspect his correspondence for the purpose of finding out what he has got on file there in relation to business transactions with the railroad, is it your idea that the field agent can exact of him all his papers and sift out from them what the commission wants?

Commissioner HALL. I should say that if the field agent asked for that he would be asking for more than the statute provided.

Senator BRANDEGEE. Well, why?

Commissioner HALL. Because he has to have access to all the accounts, and so on, relating to business transactions of, for, or with the carriers.

Senator BRANDEGEE. Well, what I am asking you is this; Has the field agent simply authority to take what the man voluntarily hands to him as all the matters relating to the business transaction, or has he authority to examine all and extract what he thinks is relevant?

Commissioner HALL. He certainly has not under the language of this act the right to have access to anything except what the act gives him the right to.

Senator BRANDEGEE. How can he get what he wants, then?

Commissioner HALL. As a matter of fact, I suppose he will go to the stockholder, if you suppose such a case, or the business concern that has had a business transaction with the road or for the road and say: "I want just what the statute says here; I am entitled under the statute to have access to that; will you kindly afford it to me?"

Senator BRANDEGEE. And then suppose the man hands out a letter in connection with it and says: "This is all I have got." Do you think he would be satisfied with that?

Commissioner HALL. I think he would report then to the Interstate Commerce Commission.

Senator BRANDEGEE. Do you think the

Interstate Commerce Commission would be satisfied and let it drop there?

Commissioner HALL. No; I can not say that I think they would let it drop there.

Senator BRANDEGEE. You either have to have plenary power to make your search yourself to see that you have not overlooked anything, or else you have to take the word of the fellow you are searching. In a bill of this kind ought not that to be defined more accurately, unless it is intended to be all inclusive?

Commissioner HALL. Well, the penalty is quite severe for a failure to afford the access. A man who is called upon to give the access and does not do it is exposing himself to a heavy penalty.

Senator BRANDEGEE. Do you think this right of search would be sustained in the courts as constitutional?

Commissioner HALL. That is the view of the commission and the view of the counsel of the commission. We recognize, of course, that that is a matter which is debatable.

Senator BRANDEGEE. Who is the counsel of the commission?

Commissioner HALL. Joseph W. Folk. We recognize, of course, that a man could profitably spend two years in an investigation of just this feature here; but after all it has got to be decided by the Supreme Court; it is the Supreme Court that will say whether it is constitutional or not.

Volume 1, page 519.

Senator LIPPITT. As I understand, that is the present law. Now, then, that law provides that they shall examine the papers, accounts, and so forth, kept by the carriers, and what you were arranging for is to give access to the papers kept not only by carriers, but by anybody else.

Commissioner HALL. So long as they relate to dealings with or by the carriers.

Senator LIPPITT. You now have the right to examine the carriers' papers and you want to have the right to examine the papers and books and so on of any individual?

Commissioner HALL. To have the power; but of course, there would be no occasion to use it—

Senator LIPPITT. I understand; but that is the extension of the power you are asking for.

Commissioner HALL. That is the suggestion.

Volume 1, page 523.

Commissioner HALL. I might mention that these provisions, A, B, and C, have been separately stated, in separate clauses, so as to provide for the eventuality that the Supreme Court might not consider that the act was drawn within proper constitutional limitations. For example, if it should be found that "C" was in excess of the proper constitutional powers of Congress, then "C" should be stricken out. They have been

separately stated for that purpose, as well as in the interest of clearness.

Volume 1, page 526.

Commissioner HALL. Assume for a moment that this particular clause were enacted in the shape in which it is. Would not the natural consequence be that any underwriting concern, any construction company, any subsidiary company, whatever form it took, having business transactions with the railway would from that time on keep books and accounts and correspondence so segregated from their other affairs that they could readily be accessible? Should not that be so in the case of such a familiar illustration as a construction company or an underwriting syndicate or something of that sort?

Senator BRANDEGEE. Of course, that is entirely guesswork. The commission has no authority to compel these other people that may deal with the carrier to keep uniform accounts; but even if it did, as to structural and financial companies, have regular dealings with railroads, perhaps, your bill goes to the extent that an agent of the commission may go to a person who even has simply casual relations with the carrier and gives him a right to go into that person's private papers. You say, "Oh, we would not exercise it." You ought not to ask power, in my opinion, that you do not intend to exercise.

Commissioner CLEMENTS. There might be this distinction: A railroad company is required to keep certain books in certain

forms; but the casual dealer with the railroad company has a great many other transactions with other people, and is not confined exclusively to transportation matters, and, as this act only gives access to those things in connection with the transportation business, and no other, would not the commission be limited in looking at such things in the hands of outsiders as it knew of? And if it did not know there was any there, it could not go any further, but would take the man's word for it.

Senator BRANDEGEE. I do not think so at all.

Commissioner CLEMENTS. It would be only partially efficient, perhaps, not wholly so, like the examination of the railroad company's papers, but it would be affording some facility along that line, where we happened to know they had such papers.

Senator BRANDEGEE. I do not agree with you on that. I think instead of this power being exercised to get something you knew about, the very object of it is to go on a fishing expedition to see what you can unearth, and for that reason it is made all-inclusive. I may be entirely wrong about that; but if it does not mean that, I need a dictionary.

Senator SAULSBURY. My objection is that even if it does mean that it will interfere with the ordinary relations of life and violate one of the principles of our jurisprudence, it is against the spirit of our institutions to be able to haul a man up and put

him through all kinds of an examination. Suppose this bill should become a law and suppose Senator Brandegee may have represented Senator Lippitt in some lawsuit connected with some common carrier. The wording in this bill would certainly give the commission's examiner the right to go into the office of Senator Brandegee and examine all his papers; he being attorney for Senator Lippitt, he could go all through his papers to find out anything relating to this carrier's business. That would be an extreme case but I am trying to cite an extreme case.

Commissioner CLEMENTS. I should think that the commission would have to go after something that it knew about, and that it could not go on a fishing expedition through all the papers of an individual to see whether there was anything pertinent there, as it can do in the case of a railroad office, because in the case of a railroad, of course, there all the business is relating to transportation matters.

Senator BRANDEGEE. I agree with you that I think it ought to be limited to that. Then why not limit it to that?

Commissioner CLEMENTS. I think that Mr. Hall will agree with me that if necessary to make it clear on that point that it should be limited. If we knew that a man probably has some information or some papers that are pertinent we ought to have some right to get that information or those papers; but

it was not intended to turn people loose to search every man's house to see whether or not something could be found there that did relate to some matter under investigation, and I would not think it would be altogether as efficient as looking into a railroad office, because there everything relates to the common carrier business; but it would enable us to get it when we know it is there, and it would put a man under responsibility, under the penalties of the law, if it was there to disclose it. So that under that duty and under those penalties we would get a part of it.

Mr. FAULKNER. If you knew it was there the penalties themselves would enforce the delivery.

Commissioner CLEMENTS. Yes. There is not any power or penalty either under existing law to reach it in the hands of an outsider.

The CHAIRMAN (after a short informal recess). Will you now proceed, Mr. Commissioner?

Commissioner HALL. Mr. Chairman, it is not my purpose to add to what I have said further than to just explain how this came to be worded in the way in which it is, the transpositions that have been made, and so on. There are others on the commission abler than I who could explain better than I the underlying reasons that call for it. But it is my idea that what is here must be read in the light of the Supreme Court decisions;

that it must be read in the light of its underlying spirit; that it is not the purpose of the act to regulate commerce that inquisitorial powers should be given to the commission. These are enabling provisions, to enable the commission to discharge the duties devolved upon it, and it seems to me the wording suggested here must be interpreted in the light of that obligation and duty as construed by it, and could not be extended to the extreme cases suggested. But I recognize, of course, that it is debatable, that this is perhaps the debatable part of the draft of the bill, and it is submitted here simply as showing you what the commission sees as being useful, if constitutional, when the occasion arises, to enable it to discharge the duties that Congress expects it to discharge.

On page 8, line 12 and following, there has been a bringing together of some provisions that already exist in the act, to clarify those a little, and extending the sweep so that a person who does not himself make, but causes to be made, a false entry in accounts shall be as guilty as the man who actually holds the pen. Of course he has got to be convicted.

Senator LIPPITT. Do you find many cases under your present powers where you are not able to get the papers you want, where such papers are not submitted to you? Are such cases common or not?

Commissioner HALL. I think Judge Clem-

ents can answer that question better than I can.

Commissioner CLEMENTS. I do not think the question has arisen often. The most conspicuous case is the investigation authorized by the Senate of the Louisville & Nashville Railroad Co. and the Chattanooga & St. Louis Railroad Co., which investigation is now pending.

Senator LIPPITT. In your daily investigations do you find any difficulty in getting what you want?

Commissioner CLEMENTS. I understand that we generally get without difficulty from the railroads what we call for.

Commissioner HALL. In the Union Pacific case, I think it was, some books were burned.

Commissioner CLEMENTS. That was in the Harriman investigation. Kuhn and Loeb refused to testify, and Mr. Harriman refused to testify to certain questions. But ordinarily in the investigations of the examiners into the railroad companies I do not understand that they are hampered in securing papers they desire. That is the general rule, as I understand it.

Commissioner HALL. The words in the twelfth line, "natural or artificial," are inserted so as to conform with words used elsewhere in the act. (Reading:)

"Any person or persons, natural or artificial, who shall willfully make, or cause to be made, any false entry in any accounts,"

and then comes a little condensation, in the fourteenth line, by striking out the words "of any book of accounts, or in any record."

In line 17 there is again inserted "or cause to be made"; and in the nineteenth line, again, "or cause to be kept" is inserted; and in the twentieth and twenty-first lines the words "of said business" are inserted, because of the extension of the provisions now on page 7 to directors, stockholders, officers, and so on, of carriers and to any other persons having business transactions with carriers. This is so as to confine it, here as there, to the business of the carrier.

Senator LIPPITT. What does that mean? Does that mean that that applies to private individuals—"of said business"?

Commissioner HALL. If you call a construction company or an underwriting syndicate a private individual, yes; it does mean that.

Senator LIPPITT. If it includes a construction company it includes an individual or a grocer who sells anything to the railroad company?

Commissioner HALL. So far as the language goes.

Senator LIPPITT. And keeps some memorandum of it other than you prescribe?

Commissioner HALL. We do not prescribe the books that the grocer shall keep, if that is what you mean.

Senator LIPPITT. That is what I mean; yes. That only applies to railroads, does it?

Commissioner CLEMENTS. As to prescribing the books to be kept; yes.

Commissioner HALL. Yes.

Senator LIPPITT. It says "any person or persons who shall keep or cause to be kept any other accounts, records, or memoranda of said business than those prescribed or approved by the commission."

Commissioner HALL. Well, those that are prescribed by the commission are the books, accounts, and memoranda of carriers.



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**IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1914.**

No. 712.

FREDERICK W. ELLIS, APPELLANT,

vs.

**THE INTERSTATE COMMERCE COMMIS-
SION, RESPONDENT.**

REPLY BRIEF FOR APPELLANT.

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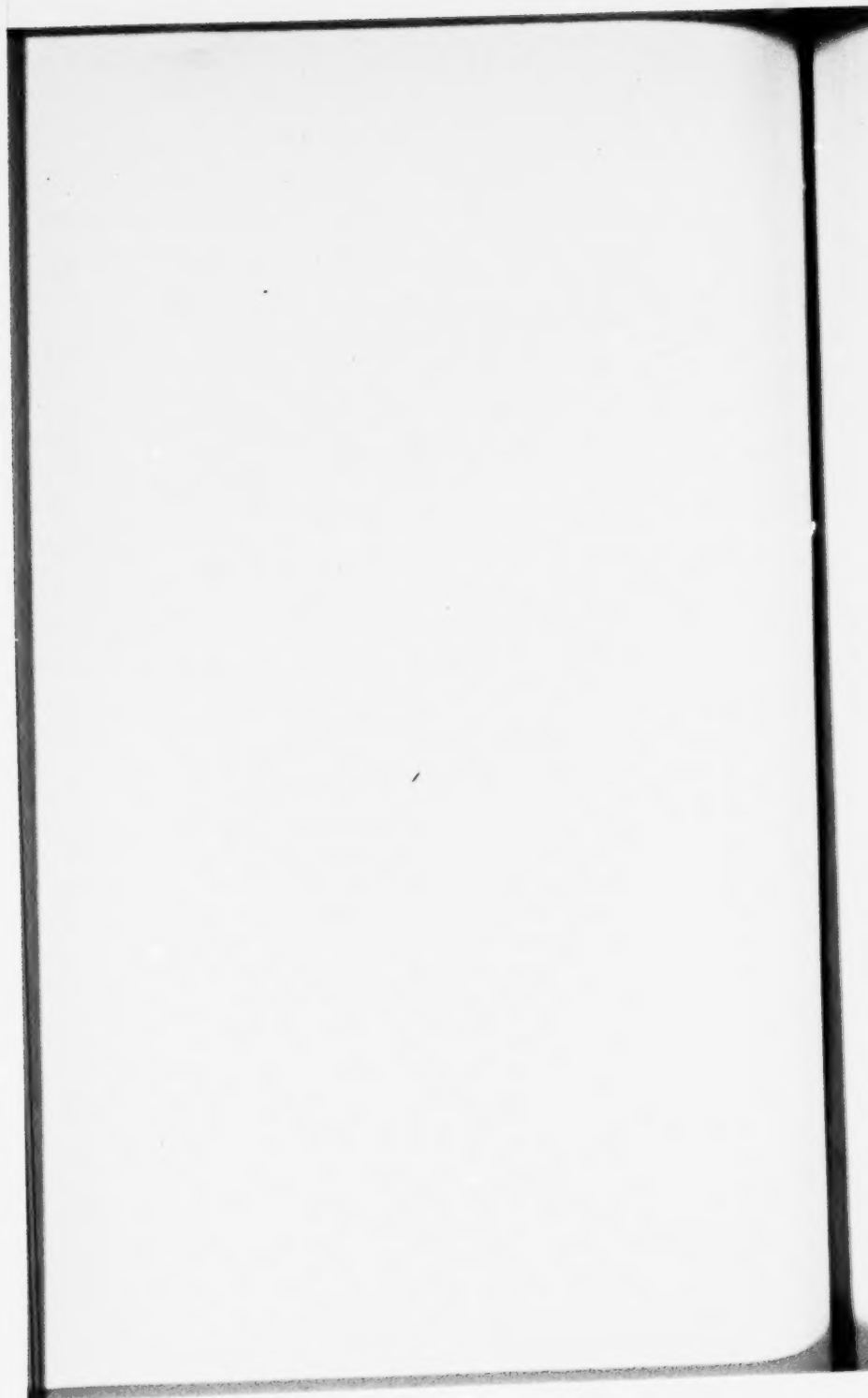


TABLE OF CONTENTS.

	Page.
SCOPE AND PURPOSE OF REPLY BRIEF.....	1
I. ARMOUR CAR LINES IS NOT A COMMON CARRIER SUBJECT TO THE ACT TO REGULATE COMMERCE.	2
Congressional debates	10-24
II. THE DEMANDS OF THE COMMISSION AMOUNT TO AN UNLAWFUL INVASION OF THE PRIVATE RIGHTS AND AFFAIRS OF THE APPELLANT AND OF THE COMPANY HE REPRESENTS.....	26
The question is one of power, not of relevancy of evidence	26
Evidence demanded not relevant to any legitimate inquiry Commission may undertake.....	27
Act to Regulate Commerce nowhere provides that railroads shall only pay reasonable compensation for cars, materials, labor, etc.....	28
Government's suggestion of possible rebates.....	30
CONCLUSION	34

CASES CITED.

Brimson Case, 154 U. S., 447.....	34
Gracie vs. Palmer, 8 Wheat., 605.....	10
Harriman Case, 211 U. S., 407.....	29, 33, 34
Louisville & Nashville Case, 236 U. S., 318.....	33
Pacific Railway Commission Case, 32 Fed., 241.....	34
Union Stockyards Co. vs. United States, 169 Fed., 404.....	8
United States vs. Union Stockyard & Transit Co., 226 U. S., 286	7
Congressional Record, vol. 40, part 2, p. 1828.....	11
Congressional Record, vol. 40, part 2, pp. 1843-4.....	13
Congressional Record, vol. 40, part 2, p. 1910.....	14
Congressional Record, vol. 40, part 2, p. 1997.....	15
Congressional Record, vol. 40, part 2, p. 2004.....	14
Congressional Record, vol. 40, part 3, pp. 2020-1.....	15
Congressional Record, vol. 40, part 7, p. 6438.....	24
Congressional Record, vol. 40, part 7, pp. 6439-40.....	18



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REPLY BRIEF FOR APPELLANT.

In our main brief we discussed four propositions:

First. That Armour Car Lines is not a common carrier subject to the provisions of the Act to Regulate Commerce;

Second. That the demands of the Commission amount to an unlawful invasion of the private rights and affairs of the appellant and of the company he represents;

Third. That these demands were not even justified by the Commission's own orders lying at the foundation of the proceeding; and

Fourth. That the order made by the lower court is appealable.

The Government's brief does not discuss the fourth proposition, and we therefore assume counsel are now convinced that the order is appealable.

The third point is not specifically considered. It is inferentially treated by the Assistant Attorney General under the second principal heading of his brief.

In this reply we shall endeavor without unnecessary repetition of the main argument to deal with those features of the Government's brief which, in our opinion, involve either a false interpretation of the law or a misconception of the facts.

I.

Armour Car Lines Is Not a "Common Carrier" Subject to the Act.

The contention that Armour Car Lines is a carrier subject to the act is now made by the Government for the first time. The Petition contains no such allegation, and counsel for the Commission made no such claim in the court below.

We plant ourselves squarely on the terms of the

act itself. The Government pleads for a loose definition of the term "common carrier," not to be found in the statute. After stating (on page 6) that "the expression 'common carrier' is not therein used in its technical sense," the Assistant Attorney General frames his own definition as follows (page 7):

"A common carrier is one who undertakes for hire to transport, from place to place, passengers or goods, or to furnish cars, refrigeration, etc., for such goods, of those who may choose to employ him."

This begs the entire question at issue. We submit that it serves no useful purpose in the case to lay down such a definition, and then proceed, as the Government does, to argue that Armour Car Lines falls within its scope.

The act itself was never intended to leave room for speculation. Few statutes have received at the hands of Congress the patient, detailed consideration accorded to the Act to Regulate Commerce. It purports to embody exact definitions. It was the evident intention of Congress to define such terms as "common carrier," "railroad," "transportation," etc., so as to make it unnecessary to look elsewhere for their meaning.

The Government's brief states (page 6):

"Appellant's insistence that only common-law 'common carriers' were embraced in the act, would exclude from subjection to its provisions carriers engaged exclusively in the transportation of passengers."

We have not argued that only common-law common carriers are embraced in the act. We have consistently followed the precise language of the law. Obviously not all common carriers are made subject to its provisions—only such carriers as are specified. Otherwise, why has Congress specifically designated pipe lines, express companies, and sleeping-car companies? Note the scrupulous care with which this idea is enforced throughout the statute. The phrase “common carriers subject to the provisions of this act,” or its equivalent, recurs wherever carriers are mentioned. It is always *such* carriers that are referred to. In no single instance that we can discover has the act employed the term in any general sense. Section 12, under which the Commission here proceeds, presents no ambiguity. The Commission’s authority is limited to inquiry “into the management of the business of all *common carriers subject to the provisions of this act.*”

On the other hand, a carrier must at least carry. Although the act does not purport to cover all common carriers, it does necessarily deal with the elementary and well-settled meaning of the words used. Section 1 makes the provisions of the act applicable to “any common carrier or carriers engaged in the transportation of passengers or property * * * by railroad * * * from one State or Territory * * * to any other State or Territory.” The three terms, to wit: “Common carrier,” “railroad,” and “transportation,” are fur-

ther defined in the section. "Common carrier" is declared to include express companies and sleeping-car companies. The term "railroad" is declared to include bridges, ferries, switches, spurs, tracks, terminal facilities, etc. "Transportation" is declared to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported." In other words, common carriers or carriers engaged in interstate transportation by railroad (transportation to include, among other things, all instrumentalities and facilities of shipment and all services connected with refrigeration or icing of property transported) were made subject to the provisions of the act. Now, the Government construes this to mean that any person or company owning and leasing cars to carriers by railroad, or performing for such carriers by railroad the service of refrigeration or icing, becomes *ipso facto* a common carrier subject to the act, even though such person or company be not in fact a carrier at all. Counsel for the Government has astutely reversed the definition in an effort to enlarge its scope. Congress has not declared that every person who contracts with a carrier by railroad to supply such carrier with cars or services connected with icing and refrigeration thereby be-

comes himself a common carrier subject to the act. Congress has only said that common carriers by railroad are engaged in transportation when they do certain things, among others, to-wit: handle cars, whether they own them or not, and furnish the service of icing and refrigeration. It should be constantly borne in mind that the term "transportation" is employed throughout the act in various connections; as, for example, in the provisions relating to the transportation of commodities in which the carriers are interested, the free transportation of passengers, the discrimination and preference clauses, the requirements for the filing of tariffs, etc.

The status of Armour Car Lines is fixed by the functions it performs. In the last analysis these are two: (1) it owns and leases to railroads and others cars specially constructed and adapted to the transportation of certain perishable products; (2) under contract it furnishes to railroads certain services connected with icing and refrigeration of such cars and others while they are being operated by the railroads. The company does not hold itself out to the public either to furnish cars or to perform these services; it deals only with the railroads. It has no interest in the transportation charges. It does not file tariffs. It has no motive power. It could not carry goods from place to place if it wanted to. The railroads publish the tariffs and collect and retain the charges evidenced thereby. Section 6 of the act clearly makes the

railroad companies responsible to the public for the icing charges, which are required to be stated in the tariffs separately from the charges for transportation.

Manifestly Armour Car Lines is not a carrier in any sense. It is at most a company supplying to carriers (and not to the public) a service which, as performed by carriers (for the public), is included within the definition of "transportation" as laid down by the Act to Regulate Commerce.

The difficulty in framing any definition of "common carrier" so as to include Armour Car Lines is fundamental. The Assistant Attorney General's definition is an apt illustration:

"A common carrier is one who undertakes for hire to transport, from place to place, passengers or goods, or to furnish cars, refrigeration, etc., for such goods, of those who may choose to employ him."

Assuming that the act justifies such a definition, still Armour Car Lines would not fall within its scope. The company does not hold itself out as one who undertakes for hire to furnish cars or refrigeration service to any one who may choose to employ it. It does not deal with the public at all. This essential element of a common carrier is utterly lacking. Counsel asserts that this circumstance is immaterial (page 7) and cites *United States vs. Union Stockyard and Transit Co.*, 226 U. S., 286. The ground of the decision, and the

vital distinction between that case and this, may be gathered from the following passage in the opinion by Mr. Justice Day:

(Pages 304-5) "Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the Trunk Line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them. In *Union Stock Yards Co. vs. United States*, 169 Fed. Rep., 404, Mr. Justice Van Devanter (while a circuit judge), speaking for the Court of Appeals, said (406):

"Its (the Stock Yards Company's) operations * * * include the maintenance and use of railroad tracks and locomotives, the employment of a corps of operatives in that connection, and the carriage for hire over its tracks of all live stock destined to or from the sheds or pens, which, in effect, are the depot of the railroad companies for the delivery and receipt of shipments of live stock at South Omaha. The carriage

of these shipments from the transfer track to the sheds or pens and vice versa is no less a part of their transit between their points of origin and destination than is their carriage over any other portion of the route. True, there is a temporary stoppage of the loaded cars at the transfer track, but that is merely incidental and does not break the continuity of the transit any more than does the usual transfer of such cars from one carrier to another at a connecting point. And it is of little significance that the stock-yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire a part of the transportation of every live-stock shipment which they accept for carriage to or from that point, including such shipments as are interstate.' "

Plainly, both in the case in this court and also in the case in which Mr. Justice Van Devanter wrote the opinion for the Court of Appeals of the Eighth Circuit, the stock-yards company was held to be a common carrier because it actually took part in the carriage of live stock for the public pursuant to a joint arrangement with connecting carriers. This court emphasized the fact that the Union Stockyard & Transit Co. of Chicago held itself out as a common carrier, and constantly acted in that capacity, while Mr. Justice Van Devanter held that although the Omaha Stockyards Com-

pany did not "hold itself out as ready or willing generally to carry live stock for the public," nevertheless its co-operation with the railroads and its actual performance amounted to the same thing. We submit that the distinction so clearly laid down by this court in *Gracie vs. Palmer*, 8 Wheat., 605, cited in our earlier brief, is the settled view of this court and in strict conformity with its later decisions.

A considerable portion of the Government's brief is devoted to an attempt to show that Armour Car Lines comes "within the spirit of the act." Counsel draws from the legislative history of the act a conclusion different from that presented in our main brief. An attentive re-examination of the debates in Congress has convinced us of the correctness of our original position on this point. The debates and the reports of the Interstate Commerce Commission for that period disclose with great clearness the situation with respect to what was designated as the private car abuse. Private car lines had come into existence because certain large shippers of perishable products demanded a peculiar type of car and a special service, which the railroads contended they were under no obligation to supply. The railroads for the most part flatly refused to furnish refrigerator cars or refrigeration service. They took the position that as common carriers they were called upon only to transport goods offered for shipment, and that refrigeration formed no part of the transportation

service. Under these conditions private car lines grew up. They proceeded to deal directly with the shipping public. They issued tariffs and collected their charges just as the railroads did. This state of affairs placed the shipper in a helpless position so far as any power to regulate the charges of private car lines was concerned. On the one hand, the railroad, over whose charges the Commission had jurisdiction, contended that it was not responsible for this special service; consequently the charge could not be regulated through the Commission's power over the railroad. On the other hand, the private car line which actually furnished the service contended that inasmuch as it did not transport the commodities it was not a common carrier; therefore it was beyond the regulative power of the Commission. Such was the private car abuse which Congress undertook to remedy by the amendment of 1906. See Commissioner Knapp's opinion quoted on page 30 of our brief.

If such a solution had been deemed proper, it would have been simple to treat private car lines in the same manner as express companies and sleeping-car companies, which were afterward included by specifically declaring them to be common carriers within the meaning of the act. Amendments to that effect were offered and voted down both in the House and in the Senate. The House amendment was offered by Congressman Campbell, of Kansas, and read as follows (Cong. Rec., vol. 40, part 2, p. 1828):

“Provided, That all ventilator cars, refrigerator cars, oil or tank cars, including express company and express cars, and any and all cars which have heretofore been termed ‘private cars,’ used in the transportation of any article or commodity of interstate or foreign commerce, are hereby declared to be and are common carriers and subject to all the laws, rules, and regulations regulating or affecting common carriers in the transportation of articles or commodities of interstate and foreign commerce.

“Provided further, That from and after the passage of this act it shall be unlawful for any railroad company engaged in the business of a common carrier to contract with any person, firm, or corporation, being the producers or shippers of any article or commodity entering into interstate or foreign commerce, for the shipment or transportation of such article or commodity when such article or commodity is offered for shipment or transportation in ventilator cars, refrigerator cars, tank cars, or private cars of any character whatsoever, owned or controlled, directly or indirectly, by such producers or shippers. To be a stockholder in, or director or officer of, any company owning or controlling such ventilator cars, refrigerator cars, tank cars, or private cars of whatever character shall be considered as having such an interest as is prohibited by this act.”

The amendment was not adopted.

The Kittredge amendment in the Senate, also voted down, is quoted on page 27 of our first brief.

At the preliminary hearings before the committees prominent shippers had appeared and urged that the law be so amended as to make the railroads themselves responsible for the service and the reasonableness of the rates therefor. The shippers preferred to have but one company to deal with and hold responsible. This was the view which prevailed in both houses of Congress. There was no misunderstanding about what the law as finally enacted meant. Sweeping declarations in general debate by Congressmen to the effect that the bill would do away with the private car evil, or that private car lines were placed under the supervision and regulation of the Commission, are not especially illuminating when segregated from the rest of the debate or even from the speeches in which they were respectively made. For example, the remarks attributed to Congressman Bartlett, on page 12 of the Government brief, should be read in the light of the statements which follow almost immediately in the same speech (Cong. Rec., vol. 40, part 2, pp. 1843-4):

“This bill makes it compulsory upon the railroads to furnish the necessary cars and facilities, but it does not, of course, prevent the railroads from contracting with private car lines for the necessary equipment by which to transport such products. It simply places the *charges* exacted from the shipper by both the railroad and the private car lines under the supervision of the Interstate Commerce Commission, so that when

complaint is made an investigation can be had as to the reasonableness of such charges."

What the shippers complained of was unreasonable charges and what Congress aimed at was to make these charges subject to regulation by the Commission. This object was achieved by making the railroads responsible. Such expressions in debate as that the bill effected a remedy for the evil, or that private car lines were to be made subject to supervision, had reference to the fact that the *charges* were thus brought within the Commission's jurisdiction. No other construction is permissible if these remarks are read with their context.

The act did not make private car lines common carriers. It merely made the railroads responsible for the services which the private car lines were then performing. Congressman French said (Cong. Rec., vol. 40, part 2, p. 1910):

"It is the duty of every carrier subject to the provisions of the act to provide and furnish such transportation (as defined in section 1) upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto."

Congressman Esch said (Cong. Rec., vol. 40, part 2, p. 2004):

"The ills from which the shipping and general public have suffered as a result of

unjust charges and discriminations connected with industrial and terminal lines, switching, icing, elevation, and refrigeration were less heard of and less complained about prior to the enactment of the Elkins law than since. As these ills arose out of instrumentalities of shipment or carriage and were not due to the carriers themselves, immunity from prosecution under the Elkins Act was claimed. It is to prevent any further claim from such immunity that this bill makes the common carriers themselves solely responsible for all such instrumentalities and facilities of shipment or carriage, so that they, irrespective of any contracts or agreements they may have, may be held responsible."

Some members thought the bill should go so far as to declare private car lines common carriers. Congressman Clayton said (Cong. Rec., vol. 40, part 2, p. 1997) :

"This bill does not contain all that it should express, according to my judgment. It should go much further and include private car lines and express companies by the most explicit language."

Congressman Sterling said (Cong. Rec., vol. 40, part 3, pp. 2020-1) :

"It seems unfortunate to me that this bill does not provide that the common carrier shall own its own equipment, or at least that it shall not operate other equipment than its own or the equipment of some other *bona fide* common carrier. Transportation in cer-

tain lines might be greatly simplified by such a requirement, and opportunity for unfair charges, rebates, and discriminations greatly lessened. * * *

"I am well aware that there are serious, but by no means insurmountable, objections to this proposition. It is urged that such a law would find the railroads of the country wholly unprepared to meet the demands in certain lines of shipments and that, as a consequence the shippers and the public would suffer. It is also urged that it would amount to a confiscation of the cars and carrying equipment of private car lines and of individual shippers who owned their own cars. The present practice of railroad companies hauling the cars of shippers and of private car lines has grown up under the law, and it would be a harsh provision to require the one to equip itself, or to prohibit the other from using its property, without ample opportunity to prepare for the change. The change could be required to be made gradually, and the more gradual the better for the public. * * *

"Mr. Chairman, I submit that if Congress should provide a law making it unlawful for a common carrier to haul a car, carrying freight, when the car does not belong to it, or to some other *bona fide* carrier, and then provide that the Interstate Commerce Commission shall regulate the transition, that the common carriers would have ample time to equip themselves, and the private car owner or line ample time to dispose of its carrying equipment, even to consuming such equipment by use, the change could be made without loss to the parties and without injury or inconvenience to the public."

The annual report of the Commission quoted by the Assistant Attorney General (p. 10) does not, it will be noticed, recommend that the car lines themselves should be made common carriers, but only that the *charges* should be made subject to supervision and control by requiring them to be treated as charges for transportation. The President's message to Congress, quoted on page 11 of the Government brief, recommends that private car lines be put under the supervision of the Commission "so far as rates and agreements affecting rates are concerned."

Counsel has fallen into a curious error in reporting the views of Senators Tillman and Knox. On page 14 Senator Tillman is quoted in part as follows:

"These are designed to place under the jurisdiction of the Commission all switches, terminal facilities, private car lines, elevators, and any and all other facilities for transportation."

This remark was made by Senator Tillman when he reported the bill to the Senate. The brief then cites Senator Knox as agreeing with Senator Tillman. In proof of this, Senator Knox's short statement at the conclusion of the debate is set forth on pages 17 and 18 of the Government brief. Counsel draws the conclusion that the Kittredge amendment was voted down, not because it was deemed unwise to divide responsibility by making the

private car lines themselves common carriers, but because the amendment was deemed unnecessary. The inference sought to be conveyed is that the Senate regarded the amendment as unnecessary because the bill already made private car lines common carriers. The whole matter is perfectly clear if the entire discussion leading up to Senator Knox's statement is read (Cong. Rec., vol. 40, part 7, pp. 6439-40):

"Mr. BEVERIDGE: Mr. President, I desire to ask either the Senator from South Carolina (Mr. Tillman) or the Senator from Iowa (Mr. Dolliver) a question; but I will first ask the Senator from South Dakota (Mr. Kittredge), Does the bill as it stands, in case the present amendment should not be adopted, permit the railroad company to make its contract with the private car line and include the charge of the private car line within the charge that the railroad company makes to the shipper?

"Mr. TILLMAN: Mr. President, unless the language on pages 2 and 3, where the terms 'railroad' and 'transportation' are defined, is twisted out of its ordinary interpretation, it looks to me as if those two words as defined there embrace everything that could be utilized or would be required in carrying either passengers or freight.

"Mr. BEVERIDGE: *Then, as the bill stands, as amended, the shipper will have to deal with one carrier, and not with two carriers?*

"Mr. TILLMAN: *That is as I understand it. The Interstate Commerce Commission would have to deal with the railroad alone;*

it does not matter whose car it uses or what sort of a car it may be.

“MR. BEVERIDGE: Certainly; but whatever charges the railroad company makes, the private car line must be included in the toll which it charges the shipper; so that *the shipper will have to deal with only one common carrier.*

“MR. TILLMAN: *I do not think the Commission would have anything to do with the charge for the facilities of transportation or with what contract it might have with this person. He having secured cars for the transportation of stock or fruit from whatever source, then the railroad alone is amenable to the authority, order, and supervision in fixing the rate by the Commission. That would be my judgment of this language.*

“MR. BEVERIDGE: My question has nothing to do with the Commission. As I look at the amendment which is proposed and at the bill as it has been explained to the Senate by those on both sides who stand sponsor for it, *the bill as it now stands, without this amendment, provides that the shipper shall deal with one carrier and pay one toll, whereas if the amendment of the Senator from South Dakota be adopted, the shipper must deal with two carriers and pay two tolls.*

“MR. TILLMAN: *To which I object.*

“MR. BEVERIDGE: If that is correct—and that is the purpose of my question to the Senator from South Carolina and to the Senator from South Dakota—then I cannot see the wisdom of the proposed amendment, and it was in order to bring the matter

clearly before the Senate that I ventured to propound the question to both Senators.

"Mr. TILLMAN: *In my judgment, the amendment is entirely unnecessary.*

"Mr. BEVERIDGE: *I can see the very serious possible objection of compelling a shipper to deal with two common carriers where he might deal with but one and to pay two charges where he might pay but one.*

* * * * *

"Mr. LODGE: Mr. President, it is well known that many of the worst cases of personal discriminations and rebates occur in connection with private car lines; many of the worst abuses have arisen through such lines. If they can be reached through this bill, certainly that is greatly to be desired. But the point I am trying to get at is whether we can hold the railroads responsible for discriminations made by the private car lines? If we cannot, then the bill, so far as private car line discriminations go, is worthless.

"Mr. TILLMAN: If the Senator from Massachusetts will continue to occupy the floor so that I shall not be ruled out of order, I wish to make a suggestion.

"Mr. LODGE: Certainly.

"Mr. TILLMAN: So as to get this matter absolutely at rest, and make it impossible for any one to construe this language otherwise than as I have just interpreted it, I would suggest to insert, on page 2—

"Mr. KNOX: Mr. President—

"The VICE-PRESIDENT: Does the Senator from Massachusetts yield to the Senator from Pennsylvania?

"Mr. LODGE: I have just yielded to the Senator from South Carolina.

"Mr. TILLMAN: On page 2 of the bill, line 21, after the word 'railroad,' if we insert the words 'or cars,' we would then include in the definition of the word 'railroad' the cars, so that there could be no possibility of the private ownership of the car exempting the car from the control of the Commission.

"Mr. LODGE: That is what I want to get at—the proper control over the private car lines by the Commission.

"Mr. TILLMAN: I will move, then, to insert those words.

"Mr. KNOX: Mr. President—

"The VICE-PRESIDENT: Does the Senator from Massachusetts yield to the Senator from Pennsylvania?

"Mr. LODGE: Certainly, I yield to the Senator from Pennsylvania.

"Mr. KNOX: *If the Senator from South Carolina will permit me just a moment, I think he has properly construed this bill.* When you come to look at the proposed amendment it only has one purpose, and that is to declare, as will be seen if the amendment be examined carefully on the fifth line, that the persons owning or leasing or managing cars shall be deemed carriers. For what purpose? The next line answers that question. They are to be deemed carriers 'within the meaning of this act.' Why are they to be deemed carriers 'within the meaning of this act'? To give the Interstate Commerce Commission jurisdiction over them. If you will take the bill as the Senator from South Carolina called attention to it a moment ago, you will find that under the definition of transportation that is all provided for. Assuming that they are not carriers and assuming that they are

not now within the jurisdiction of the interstate-commerce act, what are they? They are facilities and instrumentalities of commerce. That is what they are as a fact, and that, of course, no one can question. They are facilities and instrumentalities of commerce—they are cars. The pending bill says that all instrumentalities and all facilities of every kind used or necessary in the transportation of persons or property shall be within the meaning of this act, and then, in order 'to make assurance double sure,' they bring it in under the title of 'transportation,' and say that 'transportation shall include cars and other vehicles.' I therefore think it is wholly unnecessary to adopt the amendment of the Senator from South Dakota.

"Mr. CULLOM: May I ask the Senator a question?

"The VICE-PRESIDENT: The Senator from Massachusetts has the floor. Does he yield to the Senator from Illinois?

"Mr. LODGE: I believe I have the floor, but I yield to the Senator.

"Mr. CULLOM: I did not know the Senator from Massachusetts had the floor. The question I want to ask is whether, in view of the provision on the second page of the bill, the amendment of the Senator from South Dakota is necessary at all?

"Mr. KNOX: In my judgment it is wholly unnecessary.

"Mr. CULLOM: That is what I thought.

"Mr. LODGE: Mr. President, I have received the answer I desired to receive—that the amendment is unnecessary.

"The VICE-PRESIDENT: The question is on

agreeing to the amendment of the Senator from South Dakota (Mr. Kittredge).

"The amendment was rejected."

It will be seen that whatever Senator Tillman may have had in mind when he reported the bill, his opinion at the conclusion of the debate was unmistakable. It was this latter opinion to which Senator Knox referred when he said that Senator Tillman had properly construed the bill. In the light of that opinion, the amendment was unnecessary, not because the bill already made private car lines common carriers, but because the bill by placing the entire responsibility upon the railroads, already made the *charges* for refrigeration subject to regulation by the Commission. Senator Knox did not dissent from anything which Senator Clapp had just said; he simply declared the Kittredge amendment unnecessary for precisely the reason that Senator Tillman had done so almost immediately before.

The fact should be kept in mind that Senators Clapp and Dolliver were among the leaders in charge of this bill. They voiced the sentiment of the committee which reported the bill to the Senate. They explained with the utmost care the way in which the bill dealt with the private car situation. Their speeches contain the only detailed statements on the subject. The record of proceedings on the floor will be searched in vain for any dissent from the views they expressed. Senator Clapp, after pointing out with striking emphasis the advantages

arising from the plan of making the railroads solely responsible, concluded with a definite statement that if private car lines were at that time made common carriers subject to the act, it might lead to future embarrassment. He said (Cong. Rec., vol. 40, part 7, p. 6438):

“Before the Senate votes on the amendment I wish to make another suggestion. So far as the subject of eliminating the private car lines is worthy of consideration, it ought not to be embarrassed in the future by at this time a legislative declaration of its legal existence and its license as a common carrier. If we find in experience that thus making the private car line facilities, and including icing and refrigeration and all these matters, a part of the freight charge, to be dealt with as one matter, both with the shipper and the Commission, does not meet the evil, and it should be thought later by a gradual process fair to all and feasible as practical legislation to eliminate the private car lines, I say we ought not then to be embarrassed by the fact that we had deliberately legalized that business and recognized it and licensed it as a common carrier. There will be time enough then, if our present plan should not prove a practical one, to deal with it from that standpoint.”

This view of the common understanding as to the effect of the act is confirmed by the conduct of all parties since 1906. Private car lines forthwith ceased to have any dealings with the shipping public. They have contracted only with railroads, save

in cases where they have leased cars outright for a daily or monthly rental to shippers. In those cases the lessees of the cars have made their own arrangements with the railroads for the transportation of the cars. Since 1906 all icing and refrigeration service has been furnished directly by the railroads to the shippers. If there had been any notion that the 1906 amendment fixed upon private car lines the status of common carriers subject to the act, they should have been required to file tariffs covering their charges. The Commission has never taken any step in this direction. On the contrary, icing and refrigeration charges have, as the act provides, been set forth separately in the tariffs filed by the railroads. Whenever there has been any complaint about these charges, the railroads have been cited before the Commission and the question of reasonableness has been determined just as if private car lines did not exist. The Commission has never acted upon any other understanding than that the railroads had the sole responsibility under the act for the furnishing of refrigerator cars and the icing and refrigeration service. Shippers universally act upon the same understanding. Claims for loss and damage are invariably filed against the railroads; never against the private car lines.

II.

The Demands of the Commission Amount to an Unlawful Invasion of the Private Rights and Affairs of the Appellant and of the Company He Represents.

The discussion of this point by the Assistant Attorney General rests upon the broad assumption that the question is wholly one of abstract or logical relevancy. His argument is that the Commission has general authority to investigate the matters referred to in its orders; that the evidence sought is relevant to the inquiry; and that, therefore, Armour Car Lines, even though not a common carrier, may be compelled, through its officers, to produce it. In other words, the power of the Commission over the private affairs of the citizen is circumscribed only by the rule of logical relevancy. We venture to say that no more sweeping claim of power has ever been asserted on behalf of an administrative board. We insist that the question involved in this case is one of power, and not of relevancy of evidence; that the power of this Commission is defined in the Act to Regulate Commerce; and that the legislative grant of "authority to inquire into the management of the business of all common carriers subject to the provisions of the act" cannot by this appeal to relevancy be indefinitely extended to the management and

private business of other companies and persons not subject to the act. Nor do we concede by any means that the evidence sought to be adduced can be deemed relevant to any legitimate inquiry which the Commission may undertake. Leaving out of consideration the proposition (not discussed in the Government Brief) that the demands are beyond the scope of the Commission's orders, we fail to see how the demands now in controversy can be material. In the exercise of its ample powers over the charges made by the railroads to shippers, the Commission may undoubtedly investigate the reasonableness of the charges for icing and refrigeration. Two principal lines of inquiry may be considered proper in that connection, to-wit: the value of the service rendered to the shipper and the cost to the railroad of supplying it. In this case the Commission already has the fullest information concerning the element of cost to the railroad. It knows exactly what the railroad pays to the car line company. The contracts covering these payments are on file. There is not the slightest objection to the fullest disclosure of all relations between the two companies. Not content, however, with this information, the Commission insists upon knowing what profit, if any, the car line makes. Where is the inquiry to end? Are the private affairs and profits of the man who sells the ice to the car line also to be laid before the Commission? How can all this be relevant, in any proper sense, to an investigation into the reasonableness of the icing charges

made by the railroad to the shipper? Whether the profits of antecedent vendors be great or small, exorbitant or inadequate, that cannot concern the Commission in the exercise of its power to regulate the railroad charge. It is that charge alone which the Commission may control and fix.

The gist of the Government's contention in this case appears on page 35 of its brief, where it is said:

"It is evident that if the railroads pay exorbitant allowances to private car lines for rental of cars, it would be in violation of the act, because it expressly provides that only just and reasonable compensation may be paid and because unfair allowances would result in unjust and unreasonable rates to shippers and high prices to consumers."

The substance of this is that if a railroad pay excessive prices for the rental of cars it is in violation of the act "because it expressly provides that only just and reasonable compensation may be paid." We submit that the Act to Regulate Commerce nowhere provides that a railroad company shall only pay reasonable compensation for cars leased or bought, for ice sold to the railroad company, for track material, salaries of employees and officers, or for any other materials or services. Congress did not undertake to regulate these charges in any way. What Congress did undertake to regulate was the rate which the railroad as a

common carrier should charge the public for performing a common carrier service, and if in its tariffs it publishes a rate of any kind for terminal charges, for icing or refrigeration, for carriage, or for anything else, this is subject to the regulation of the Interstate Commerce Commission. But the Commission has no power to fix the prices paid for cars leased, for rails bought, for salaries of employees, or for any service performed for the railroad companies by outside parties.

Nobody denies that the Commission in fixing rates may take into consideration the extravagances of the railroad company if it has paid exorbitant prices, but this may be determined by evidence, the same as any other question. The act nowhere authorizes the Commission to call before it in a general investigation manufacturers who have sold materials to a railroad company and compel them to produce their books and show their profits, cost of manufacture, etc. The same contention now made by the Government was made in the *Harriman Case*, 211 U. S., 407, where the Commission was investigating not only the subject of community of interest, but also "the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor"; and it was contended by the Commission that the excessive and wasteful prices paid for property bought from its directors, including Harriman, were so connected with the reasonableness of rates to be charged to the public as to bring the whole matter within the

jurisdiction of the Commission. Mr. Justice Holmes said:

“We are of the opinion, on the contrary, that the purpose of the act for which the Commission may exact evidence embraces only complaints for violation of the act and investigations by the Commission upon matters that might have been made the object of a complaint.”

Now, it is perfectly evident that a claim made that a railroad is paying too much for rental of cars, or for rails, or for salaries of employees, or for any services rendered to it, could not be made the subject of a complaint to, and an order by, the Commission.

But it is asserted that the payments by railroads to car line companies afford an opportunity to grant rebates to favored shippers who may be interested in the car line companies. This suggestion of a possible rebate is a pure afterthought. It had nothing to do with the investigation as outlined in the Commission's orders; no question was addressed directly to that subject on the hearing; and there has been no refusal to supply any evidence that can be material in relation to it. The rentals paid by the railroads for the use of private cars, whether paid to car line companies or to shippers who have in turn rented the cars from their owners, are set forth in the published tariffs. They are uniform. There is no room for any discrimination. The railroads cannot pay one rental to A

and a different rental to B. The charges to shippers are likewise fixed by the published tariffs. Section 6 of the act requires these charges to be stated separately in the tariffs. Of necessity, the charges are uniform. Here also discrimination is impossible.

The suggestion made by the Assistant Attorney General, on pages 38-9 of his brief, that through the operation of Armour Car Lines, Armour & Company might in some way receive a rebate, is but an unfounded suspicion. It finds no support either in the statute or in the record. The brief states:

“It is readily seen that, if Armour & Company secured these cars, and presumably the best of them at a price less than the railroads paid Armour Car Lines and less than the charge for similar cars and services other shippers had to pay, Armour & Company by such device would receive such discriminatory service as would amount to a rebate.”

This statement involves a confusion of the relative status and functions of Armour Car Lines with those of the railroad. Although for the purpose of this argument the Assistant Attorney General starts with the assumption (see p. 24 of his brief) that Armour Car Lines is not a common carrier, nevertheless in the passage quoted he assumes that Armour Car Lines is bound to rent its cars to every shipper on the same terms. He argues that if the evidence should show a lesser charge by

Armour Car Lines to Armour & Company than to some other shipper for the use of cars, the necessary effect of the transaction would be the procuring of a rebate by Armour & Company. The fallacy of the argument is this: A rebate can arise only out of some discriminatory action of the railroad. It makes not a particle of difference where or upon what terms the shipper may get his cars, so long as the railroad hauls them on the same terms for every shipper. To illustrate: Suppose Armour Car Lines rents 50 cars to Armour & Company at \$50 per car per annum and 50 other cars to a different shipper at \$75 per car per annum; then suppose both of these shippers put their cars in the service of transporting their respective shipments over railroads which charge them identical rates for transportation and allow them identical rentals for the use of the cars. Manifestly, the railroad has been guilty of no discrimination, and neither shipper has directly or indirectly received a rebate. Where is the authority of the Commission to regulate the terms of any agreement which the shippers may make with the owners of the cars? True, the Commission may regulate the allowance by the railroad to the shipper for the use of the cars which he furnishes. Section 15 of the Act provides:

“If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used

therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or in its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section."

Of course, this provision confers the power to regulate the allowance by the railroad to the shipper, but it certainly does not authorize the Commission to fix the price the shipper shall pay an outside party as rental for the cars.

In our former brief we dealt at length with the delimitation of the investigatory power of the Commission by this court in the *Harriman*, the *Louisville & Nashville* (236 U. S., 318), and other cases. Counsel for the Government practically ignores these decisions. We do not believe they are to be thus lightly put aside. In our opinion, the court intended in these cases to establish the boundaries of the Commission's power under the act. Between the view of the court, as expressed, for example, in the *Harriman Case*, and that of counsel for the Government in this case, there is a wide gulf.

We do not understand that the *Pacific Railway Commission Case*, 32 Fed., 241, has been overruled by the *Brimson Case*, 154 U. S., 447 or by any other decision of this court. The opinion in the *Brimson Case* in fact quotes from Justice Field's famous opinion with evident approval. A reference to any citator shows that the *Pacific Railway Commission Case* is still frequently cited as an authority by the Federal courts.

We have been unable to discover anything in the Government brief to alter our conviction that the Commission's contention in this case, if granted, would extend its inquisitorial power far beyond the meaning of the act as hitherto construed by this court. It is one thing to say, as the law does, that the Commission may investigate the affairs of common carriers subject to the act; but it is quite another matter to assert that this expressly granted power carries with it the right to go into the private affairs of all those who stand to such carriers in the relation of vendors of materials and services. The step proposed is one of tremendous import. The seductive plea that information thus sought might be relevant in a broad sense, and therefore useful for some legitimate purpose of the Commission, should not blind us to the grave dangers involved—the very dangers which Mr. Justice Holmes must have had in mind when in the opinion in the *Harriman Case* he spoke of the power there

asserted for the Commission as "unparalleled in its vague extent," and uttered this striking comment: "No such unlimited command over the liberty of all citizens ever was given so far as we know in constitutional times to any commission or court."

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INDEX.

	Page.
STATEMENT OF THE CASE	1-3
Questions classified.....	2-3
ARGUMENT	3-49
I. The Armour Car Lines is a common carrier within the meaning of the act to regulate commerce.....	4-23
Commission may inquire into management of common carriers. (Sec. 12 of act to regulate commerce).....	4
A. Armour Car Lines within letter of act.....	5-23
Section 1, as amended ("common carrier," "transportation").....	5
Definitions of "common carrier".....	5-6
"Common carrier" not used in technical sense.....	6-7
Cases discussed.....	8-9
B. Armour Car Lines within spirit of act.....	9-23
Legislative history.....	9-15
Report of Interstate Commerce Commission.....	10
President's message.....	11
Congressional debates.....	12-18
Cases cited.....	18-19
Passes used by Armour Car Lines.....	19
Act liberally construed (quotations).....	22
II. Answers to questions compellable even though Armour Car Lines not common carrier subject to provisions of act....	24-49
A. Commission legally entitled to investigate matters in question.....	25-32
Commission to execute provisions of act and may require testimony (sec. 12).....	25
Commission may institute inquiry (sec. 13).....	26
Commission to prescribe reasonable rates and charges and fix allowances (sec. 15).....	26-28
Order of Commission.....	28-30
Investigation not regulation.....	32

II

ARGUMENT—Continued.

II. Answers to questions compellable, etc.—Continued.	Page.
B. Evidence sought related to matters under investigation..	32-41
Commission not bound to technical rules.....	33
Facts disclosed in record.....	34
Relevancy of questions shown.....	35-40
Cases cited.....	40
C. Appellant not exempt from answering questions pro- pounded.....	41-49
General duty to testify.....	41
Privilege must be personal.....	41
Claim of violation of privacy discussed.....	42-44
Corporation has no privilege applicable herein (quota- tions).....	44-46
Cases discussed.....	47-49
CONCLUSION	49
APPENDIX	50-54

CITATIONS.

	Page.
<i>Armour Packing Co. v. United States</i> (209 U. S. 56).....	40
<i>Atchison, Topeka & S. F. Ry. Co. v. United States</i> (232 U. S. 199, 217). 7, 19, 35	36
<i>B. & O. R. R. Co. v. Pitcairn</i> (215 U. S. 481).....	36
<i>B. & O. R. R. Co. v. Interstate Commerce Commission</i> (221 U. S. 612, 622).....	45
<i>Bank of Kentucky v. Adams Express Co.</i> (93 U. S. 174, 177).....	9
<i>Boyce v. Anderson</i> (2 Pet. 149, 155).....	6
<i>Boyd v. United States</i> (116 U. S. 616).....	48
<i>Brown v. Walker</i> (161 U. S. 591).....	45
<i>Central of Ga. Ry. v. Lippman</i> (110 Ga. 665, 672) (50 L. R. A. 678)..	6
<i>Chicago, R. I. & Pac. Ry. v. Zerneck</i> (183 U. S. 582).....	6
<i>Consolidated Forwarding Co. v. Southern Pac.</i> (9 I. C. C. 206).....	8
<i>Elder Dempster Shipping Co. v. Pouppirt</i> (125 Fed. 732).....	6
<i>Employers' Liability Cases</i> (207 U. S. 463).....	47
<i>Gracie v. Palmer</i> (8 Wheat. 605).....	8
<i>Grant v. United States</i> (227 U. S. 74, 79).....	45
<i>Hale v. Henkel</i> (201 U. S. 43, 71, 74, 75).....	45-46, 49
<i>Harriman v. Interstate Commerce Commission</i> (211 U. S. 407, 417)...	47-48
<i>Hirsch v. New England Navigation Co.</i> (113 N. Y. Supp. 395).....	9
<i>Hollister v. Nowlen</i> (19 Wendell 234, 236).....	6
<i>Hopkins v. United States</i> (171 U. S. 578).....	47
<i>Interstate Commerce Commission v. Baird</i> (194 U. S. 25, 44).....	4, 33, 40
<i>Interstate Commerce Commission v. Brimson</i> (154 U. S. 447, 473, 474, 476).....	4, 24-25, 40, 47
<i>Interstate Commerce Commission v. Goodrich Transit Co.</i> (224 U. S. 194, 211, 213, 214, 215).....	22, 25, 32, 46
<i>Interstate Commerce Commission v. Illinois Central R. R. Co.</i> (215 U. S. 452).....	36
<i>Interstate Commerce Commission v. Reichmann</i> (145 Fed. 235).....	19
<i>Kilbourn v. Thompson</i> (103 U. S. 168).....	48
<i>Lemon v. Pullman Palace Car Co.</i> (52 Fed. 262).....	8
<i>Minnesota Rate Cases</i> (230 U. S. 352, 434).....	36
<i>Mitchell Co. v. Pennsylvania R. R. Co.</i> (230 U. S. 247).....	31

IV

	Page.
<i>New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commission</i> (200 U. S. 361, 391).....	22
<i>Omaha Street Ry. Co. v. Interstate Commerce Commission</i> (230 U. S. 324).....	9
<i>Pacific Railway Comm. case</i> (32 Fed. 241).....	47
<i>Parmelee Transfer Co.</i> (12 I. C. C. 40).....	9
<i>Pennsylvania Co. v. United States</i> (236 U. S. 351).....	7, 19
<i>Propeller Niagara v. Cordes</i> (21 How. 7, 22).....	5
<i>Pullman Co. v. Linke</i> (203 Fed. 1017).....	8
<i>Smyth v. Ames</i> (169 U. S. 466, 546).....	36
<i>Southern Pacific Terminal Co. v. Interstate Commerce Commission</i> (219 U. S. 498).....	18, 40
<i>Tap Line Cases</i> (234 U. S. 1, 27).....	9
<i>Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.</i> (204 U. S. 426, 439).....	22
<i>United States v. B. & O. R. R. Co.</i> (225 U. S. 306, 324).....	22-23
<i>United States v. Louisville & Nashville R. R. Co.</i> (235 U. S. 314, 326).....	23
<i>United States v. Louisville & Nashville R. R. Co.</i> (236 U. S. 318)....	49
<i>United States v. Milwaukee Refrigerator Transit Co.</i> (145 Fed. 1007).....	19
<i>United States v. Union Stock Yards</i> (226 U. S. 286, 305, 309)....	7-8, 18, 40
<i>Union Stock Yards Co. v. United States</i> (169 Fed. 404, 406).....	7
<i>Wheeler v. United States</i> (226 U. S. 478).....	45
<i>Wilson v. United States</i> (221 U. S. 361, 382).....	44-45

Act to regulate commerce, as amended:

Sec. 1, as amended by Hepburn Act, June 29, 1906, c. 3591, 34 Stat., 584.....	5, 31
Secs. 2 and 3, Feb. 4, 1887, c. 104, 24 Stat., 379, 380.....	31
Sec. 12, Feb. 4, 1887, c. 104, 24 Stat. 379, 383—as amended, c. 128, 26 Stat. 743.....	2, 4, 25, 49
Sec. 13, amended June 18, 1910, c. 309, 36 Stat. 539, 550.....	26, 49
Sec. 15, amended June 18, 1910, c. 309, 36 Stat. 539, 551. 26-28, 31, 39	
<i>Elkins Act</i> , Feb. 19, 1903, c. 708, 32 Stat. 847, amended June 29, 1906, c. 3591, 34 Stat. 584, 587.....	28, 31, 39
<i>Annual Report of I. C. C.</i> , 1904, 14, 15.....	34-35
<i>Annual Report of I. C. C.</i> , 1905, 7.....	10
<i>Bouvier</i>	5
<i>Cong. Rec.</i> , vol. 40, Part 2, p. 1843.....	12
<i>Cong. Rec.</i> , vol. 40, Part 2, p. 1765.....	13

	Page.
Cong. Rec., vol. 40, Part 2, p. 1996.....	13
Cong. Rec., vol. 40, Part 3, p. 2153.....	13
Cong. Rec., vol. 40, Part 3, p. 2159.....	13-14
Cong. Rec., vol. 40, Part 4, p. 3835.....	15
Cong. Rec., vol. 40, Part 7, p. 3193.....	16
Cong. Rec., vol. 40, Part 7, p. 6440.....	17-18
Judson on Interstate Commerce, sec. 253.....	19
Messages and Papers of Presidents, vol. 2 of Supp., pp. 1157, 1162...	11
3 Wigmore on Evidence, sec. 2192.....	41



In the Supreme Court of the United States.

OCTOBER TERM, 1914.

FREDERICK W. ELLIS, APPELLANT,

v.

THE INTERSTATE COMMERCE COMMISSION.

} No. 712.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The Interstate Commerce Commission, on its own motion and under orders made by it, instituted an investigation, based upon complaints filed by shippers, concerning the allowances paid by carriers subject to the act to regulate commerce for the use of private cars, the practices governing the handling and icing of same, and their failure to furnish adequate service, to determine whether such allowances and practices were unjust, unreasonable, or unduly discriminatory, or otherwise in violation of the act.

All common carriers subject to the act, including Armour Car Lines and other carriers engaged in transportation as defined by the act, were made parties and duly served.

Upon hearing under these orders F. W. Ellis, vice president of Armour Car Lines, who had been duly served with subpoena, appeared but refused to answer twenty-eight questions propounded by the Commission and to produce documents demanded. Thereupon this proceeding was brought, under section 12 of the act, in the District Court of the United States for the Northern District of Illinois, to compel answers to the questions and the production of the documents. The case is here upon Ellis's appeal from the decree of the District Court requiring him to answer the questions and produce the documents.

The questions, numbered for convenient reference, appear in the appendix, pages 50-54, and may be grouped into six general classes, as follows:

1. Concerning interlocking officers and intercorporate relations between Armour Car Lines, Armour & Company, and Fowler Packing Company. (Questions numbered 1, 2, 3, 7.)

2. Concerning the acquirement by the Armour Car Lines, upon its organization, of cars previously owned by Armour & Company and Armour Packing Company. (Questions numbered 4, 5, 6.)

3. Concerning contracts of Armour Car Lines with Armour & Company and Colorado Packing Company for furnishing cars and icing service. (Questions numbered 8, 9, 12, 13.)

4. Concerning the ownership, manufacture, repair, and handling of cars, tending to show

Armour Car Lines engaged in transportation as defined by the act. (Questions numbered 10, 11, 14, 16, 17, 19.)

5. Concerning the production of statements showing profit and loss, credits and debits to income, etc., received from so much of the business of Armour Car Lines as related to transportation as defined by the act. (Questions numbered 15, 20, 21, 25, 26, 27, 28.)

6. Concerning Armour Car Lines investment in and character of ownership of icing plants and information from which the reasonableness of icing charges might be determined. (Questions numbered 22, 23, 24.)

ARGUMENT.

The Government maintains:

1. That Armour Car Lines is a common carrier engaged in transportation within the meaning of the act to regulate commerce and, therefore, the Commission has authority to inquire into the management of its business.

2. That the questions propounded related to matters under investigation, which the Commission was legally entitled to investigate, and, therefore, the witness, who offered no legal personal excuse for not answering, was properly required to furnish the information sought.

I.

**THE ARMOUR CAR LINES IS A COMMON CARRIER
WITHIN THE MEANING OF THE ACT TO REGULATE
COMMERCE.**

Section 12 of the act provides:

That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act. (Act of Feb. 4, 1887, c. 104, 24 Stat. 379, 383.)

If Armour Car Lines is a common carrier subject to the act, there can be no question as to the propriety of requiring appellant to answer the questions propounded. (*Interstate Commerce Commission v. Brimson*, 154 U. S. 447; *Interstate Commerce Commission v. Baird*, 194 U. S. 25.) This is admitted.

Within that field of inquiry (that is, into the business of common carriers subject to the act) Congress undoubtedly intended to confer upon the Commission comprehensive powers. It could act upon complaint or on its own motion, and in either case it could push its investigation to any extent that might be necessary to elicit the material facts and could invoke the aid of the Federal courts in so doing. (Appellant's brief, pp. 20, 21.)

We may proceed, then, to determine what is a common carrier subject to the act.

ARMOUR CAR LINES WITHIN THE LETTER OF THE ACT.

Section 1, as amended by the Hepburn Act, provides:

That the provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * *. and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; * * *. (Act of June 29, 1906, c. 3591, 34 Stat. 584.)

The common law meaning of common carrier has been well defined by this Court, as follows:

A common carrier is one who undertakes for hire to transport the goods of those who may choose to employ him from place to place. (*Propeller Niagara v. Cordes*, 21 How. 7, 22.)

This is practically the same as Bouvier's definition, quoted by appellant (Brief, p. 22), which is as follows:

A common carrier is one whose business, occupation, or regular calling it is to carry chattels for all persons who may choose to employ and remunerate him.

A consideration of the statute as a whole will demonstrate that the expression "common carrier" is not therein used in its technical sense.

For example, it will be observed that, as defined above and in many other authorities, the expression "common carrier" at the common law did not include carriers of persons.

The term common carrier did not at the common law embrace a carrier of passengers. (*Central of Georgia Railroad v. Lippman*, 110 Ga. 665, 672, 50 L. R. A. 673; *Boyce v. Anderson*, 2 Pet. 149, 155; *Chicago, Rock Island & Pacific Ry. v. Zerneck*, 183 U. S. 582; *Elder Dempster Shipping Co. v. Pouppirt*, 125 Fed. 732; *Hollister v. Nowlen*, 19 Wendell 234, 236.)

Appellant's insistence that only common law "common carriers" were embraced in the act, would exclude from subjection to its provisions carriers engaged exclusively in the transportation of passengers. We know that this was not intended by Congress. If it be answered that such exclusion does not result because of the addition of the words "of passengers" in the clause, "The provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property, etc.," we reply that, just as as the words "of passengers" broaden the definition of "common carrier," just so the addition, to the content of the term "transportation," of the words "all services in connection with * * * ventilation, refrigeration or icing," extends the meaning of

"common carrier" to include those performing such services.

By statute, therefore, Congress has, as far as this act and the questions in this case are concerned, extended the common law definition of the term to make it read as follows:

A common carrier is one who undertakes for hire to transport, from place to place, passengers or goods, or to furnish cars, refrigeration, etc., for such goods, of those who may choose to employ him.

As thus defined, the Armour Car Lines is clearly a common carrier subject to the provisions of the act, since admittedly it was engaged in furnishing such service. (*Pennsylvania Co. v. United States*, 236 U. S. 351, 362, 363; *Atchison, T. & S. Ry. v. United States*, 232 U. S. 199.)

The fact that Armour Car Lines does not hold itself out as ready and willing to furnish its cars and service generally to shippers, but deals with the public principally through the railroads, is immaterial. This Court has so held in adopting the following words of Mr. Justice Van Devanter, speaking, while a Circuit Judge, for the Court of Appeals for the Eighth Circuit, in the case of *Union Stock Yards Co. v. United States*, 169 Fed. 404, 406:

And it is of little significance that the stock-yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct,

and actually does conduct, for hire a part of the transportation of every live-stock shipment which they accept for carriage to or from that point, including such shipments as are interstate. (*United States v. Union Stock Yard*, 226 U. S. 286, 305.)

It appears, therefore, that Armour Car Lines comes within the letter of the act, since it was not only engaged in "transportation" as defined by the act, but practically its entire business consisted of such service.

Appellant quotes *Gracie v. Palmer*, 8 Wheat. 605, to show that Armour Car Lines does not fall within the definition of common carrier. It is interesting to note that this case was decided in 1823, years before railroads were thought of and some sixty-four years before the Interstate Commerce Commission was created. It dealt with primitive conditions and common law as distinguished from statutory common carriers. As has been seen, the meaning of the term "common carrier" has been extended by the act to regulate commerce, and this case, therefore, is beside the mark.

The quotation (Appellant's Brief, p. 30) from *Consolidated Forwarding Co. v. Southern Pac.*, 9 I. C. C. 206, decided in 1902, before the passage of the Hepburn Act, was a dictum in a dissenting opinion on a point which the majority of the Commission expressly left open.

The cases of *Pullman Co. v. Linke*, 203 Fed. 1017, and *Lemon v. Pullman Palace Car Co.*, 52 Fed. 262, are cited in support of the contention that sleeping-

car companies were not common carriers until made so by the act. This Court has apparently not passed upon the question, but has, in an analogous case, held that express companies are common carriers. (*Bank of Kentucky v. Adams Express Co.*, 93 U. S. 174, 177.)

In the other cases relied upon, the decisions merely held that carriers like omnibus lines, *Parmelee Transfer Co.*, 12 I. C. C. 40, truckmen engaged in hauling goods from docks to stores, *Hirsch v. New England Navigation Co.*, 113 N. Y. Supp. 395, street-car lines, *Omaha Street Ry. Co. v. Interstate Comm. Comn.*, 230 U. S. 324, were not carriers by railroad and therefore not common carriers subject to the act. With these we have no quarrel.

The remaining cases discussed, except those cited and relied upon by the Government, involve constructions of other parts of the act than those pertinent to the issues in this case and are therefore not in point.

ARMOUR CAR LINES WITHIN THE SPIRIT OF THE ACT.

It is proper to examine the legislative history of the act "for the purpose of ascertaining the situation which prompted this legislation" and the evils sought to be remedied. (*Tap Line Cases*, 234 U. S., 1, 27.)

This history is not brief. For years prior to the passage of the amendment, known as the Hepburn Act (June 29, 1906, c. 3591, 34 Stat., p. 584), which is the only part of the statute we are now considering, the evils arising from the private car system

had been pointed out in President's messages and reports to and debates in Congress, as well as by writers on economic subjects.

The Interstate Commerce Commission, in its annual report of 1905, submitted to the Congress that passed the Hepburn Act, said:

As the business is now conducted, some railroad companies furnish refrigeration themselves, but in most cases it is furnished by independent companies which usually provide the car, for which the railway pays, and the ice, for which a charge is made against the shipper. Formerly there were several of these companies, but to-day the business has fallen into the hands of two or three, of which the Armour Car Lines is the principal. Extended investigations by the Commission have led to the conclusion that the charges imposed are, in some cases at least, exorbitant, and that those charges are not uniformly exacted.

* * * * *

In view of the great importance of these charges to the shipper, *we suggest that the Congress ought to make that service, by express provision in the law, a part of the transportation itself.* We do not at this time recommend that carriers should be prohibited from using private cars or from employing the owners of such cars to perform the icing service if they find that course to their advantage, but we do recommend that these charges should be put on the same basis as all other freight charges. They should be published and maintained the same as the transportation charge, *and be subject to the same supervision and control.* (p. 7.)

The President, in his annual message to the same Congress, urged that the Commission be given supervision over these carriers.

All private car lines, industrial roads, refrigerator charges, and the like *should be expressly put under the supervision of the Interstate Commerce Commission* or some similar body so far as rates, and agreements affecting rates, are concerned. The private car owners and the owners of industrial railroads are entitled to a fair and reasonable compensation on their investment, but neither private cars nor industrial railroads nor spur tracks should be utilized as devices for securing preferential rates. A rebate in icing charges, or in mileage, or in a division of the rate for refrigerating charges is just as pernicious as a rebate in any other way. (Fifth Annual Message to the Senate and House of Representatives, December 5, 1905. Messages and Papers of the Presidents, vol. 2 of Supplement, pp. 1157, 1162.)

In response to the message of the President and the report of the Interstate Commerce Commission, Congress immediately began the consideration of means to remedy the evils mentioned.

The bill as reported to the House by the Committee on Interstate and Foreign Commerce contained the provision now under consideration. This provision was not amended in any manner during the long debates in the House and Senate, and appears in the approved act in the exact words in which it was reported by the committee. Whatever, there-

fore, was said with reference thereto related to its present phraseology.

In the debates many Congressmen, including two of the members of the committee who framed the bill, Townsend and Bartlett, construed this provision, as the Government now does, to place private car lines under the operation of the act and supervision of the Interstate Commerce Commission. Excerpts from their speeches follow:

This bill will place the *private car lines under the supervision and regulation of the Interstate Commerce Commission, just as it does the railroads upon which they are operated. This power is included in the bill by the definition which is given to the term "transportation,"* that word being so defined as to include these agencies engaged in interstate commerce. * * * (Congressman Bartlett, Vol. 40, Cong. Rec., Part 2, p. 1843.)

* * * * *

Some of the most serious complaints have been those against these special services. Private car companies have been organized to do the people's work; the railroads have loaned their tracks to these companies, and while they have presented the charge to the shipper these private companies have really imposed them, *and it is claimed that they were outside the jurisdiction of the Interstate Commerce Commission.* It is not necessary for me to detail to the House or the country the gross injustice which has been done the people through these instrumentalities. *We believe*

the bill effects a complete remedy for these evils. (Congressman Townsend, 40 Cong. Rec., Part 2, p. 1765.)

The private car system, including all refrigerating and icing privileges, *is also placed under the supervision of the Interstate Commerce Commission.* (Congressman Lewis, of Georgia, 40 Cong. Rec., Part 3, p. 2153.)

I would support it did it embrace only putting the single provision of *private cars, the icing of cars, terminal and switch facilities under the jurisdiction of the railroad commission.* [Applause.] (Congressman Clayton, vol. 40, Cong. Rec., part 2, p. 1996.)

The second evil which I will notice—and it is akin to the one which I have just discussed—is that of private car lines, a subject that has been so much in the public eye for the past several years, so thoroughly discussed in all the prints of the country, and so thoroughly ventilated in the hearings before the House and Senate Committees on Interstate and Foreign Commerce that I deem it unnecessary to do more than mention it in passing. Everyone knows how they grew up and the history of their development, and everyone equally knows how their pernicious practices have outraged not only the shippers, but the carriers themselves. *They deny that under the present law they are subject to the jurisdiction of the Commission and can be regulated by it, and it is apparent that something should be done, and that vigorously and effectually, to prevent their further encroachments.*

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To my mind *this effectually includes the private car lines, switch tracks, and terminals, affords a fair guaranty for their supervision and proper regulation, and, in a great measure, if not entirely, provides for existing evils so far as they are concerned. It strikes a blow at rebating in that it puts their charges under the supervision of the Commission, provides for publicity, and gives that body an opportunity to correct any inequalities and improper practices.* (Congressman Bowers, 40 Cong. Rec., Part 3, pp. 2159-2160.)

In the Senate we find similar views expressed. Senator Tillman, in reporting the bill to the Senate, said:

The bill as it is presented to the Senate is the bill that was reported to the House by its Committee on Interstate Commerce and passed by that body without amendment, and it is generally supposed to embody the well-digested views of the Executive and those leaders of his party whose advice he consents to take. There are in it some essential changes of the original interstate-commerce law—the act of 1887. *These are designed to place under the jurisdiction of the Commission all switches, terminal facilities, private car lines, elevators, and any and all other facilities for transportation or shipment or storing merchandise, in order to prevent the public carriers from utilizing such instrumentalities for purposes of discrimination or extortion. These amendments to the old law by those who have examined the question closely have been thought*

necessary to secure the best possible regulation of interstate commerce in a manner to prevent injustice and wrong to shippers. (40 Cong. Rec., pt. 4, p. 3835.)

Senator Knox, as will be seen from the excerpts from his speech, quoted *infra*, was of the same opinion.

From the above we see how emphatic were the expressions of those who had given careful attention to the bill that its passage would effectually place concerns like Armour Car Lines under the supervision and control of the Commission.

Appellant relies on two quotations from speeches by Senator Dolliver to prove that this act did not cover these companies. The second of the quotations is from a speech made on an amendment offered by Senator Foraker to take out of the definition of transportation the words "ventilation, refrigeration or icing." The amendment was offered on the supposition that the bill was designed to prevent altogether the use of private cars or to require the railroad companies to own them. Both of Senator Dolliver's speeches were devoted to showing that this view of Senator Foraker was unfounded, and that the bill, instead of abolishing the private car lines, merely regulated them. Senator Dolliver's speeches, therefore, as will be seen from a careful reading, did not construe the act to exclude private car lines from regulation by the Interstate Commerce Commission but only expressed the view that it would not compel the railroads to own such cars.

The following words show that he clearly recognized the necessity of such regulation.

So flagrant have these abuses grown that even our greatest railways have not been able to protect themselves, much less their patrons, against these extortions and wrongs. (Senator Dolliver, 40 Cong. Rec., part 7, p. 3193.)

Appellant also relies upon a speech by Senator Clapp opposing the Kittredge amendment, quoted on page 27 of appellant's brief, which expressly provided that private car lines should be deemed carriers subject to the act. In this speech Senator Clapp was chiefly interested in pointing out the desirability of having the railroad primarily responsible for furnishing refrigerator cars and icing facilities so that the shipper would have to deal with only one party. He was not concerned with protecting private car lines from supervision of the commission, but was earnestly opposing a measure he thought would require shippers to deal with two carriers. His attitude was, it is submitted, that, even if both private car lines and the railroads were carriers, still the railroad should be responsible directly to the shipper, just as the initial carrier is made liable for losses occurring on connecting lines.

Furthermore, the Kittredge amendment was not voted down by the Senate, as might be inferred from appellant's brief, because of opposition to putting these car lines under the control of the Commission. On the contrary, the amendment was apparently voted down because it was thought unnecessary.

While it was under consideration several Senators asked what was the scope of the bill as it stood. Senator Knox, who closed the debate, clearly stated that the bill already placed private car lines under the control of the Commission.

Mr. KNOX. If the Senator from South Carolina will permit me just a moment, I think he has properly construed this bill. When you come to look at the proposed amendment (Kittredge) it only has one purpose, and that is to declare, as will be seen if the amendment be examined carefully on the fifth line, that the persons owning or leasing or managing cars shall be deemed carriers. For what purpose? The next line answers that question. They are to be deemed carriers "within the meaning of this act." Why are they to be deemed carriers "within the meaning of this act?" *To give the Interstate Commerce Commission jurisdiction over them. If you will take the bill as the Senator from South Carolina called attention to it a moment ago, you will find that under the definition of transportation that is all provided for.* Assuming that they are not carriers and assuming that they are not now within the jurisdiction of the interstate-commerce act, what are they? They are facilities and instrumentalities of commerce. That is what they are as a fact, and that, of course, no one can question. They are facilities and instrumentalities of commerce—they are cars. The pending bill says that all instrumentalities and all facilities of every kind used or necessary in the transportation of persons or property shall be within the meaning of this act, and then, in

order "to make assurance doubly sure," they bring it in under the title of "transportation," and say that "transportation shall include cars and other vehicles." *I therefore think it is wholly unnecessary to adopt the amendment of the Senator from South Dakota.*

MR. CULLOM. May I ask the Senator a question?

THE VICE PRESIDENT. The Senator from Massachusetts has the floor. Does he yield to the Senator from Illinois?

MR. LODGE. I believe I have the floor; but I yield to the Senator.

MR. CULLOM. I did not know the Senator from Massachusetts had the floor. The question I want to ask is, whether, *in view of the provision on the second page of the bill, the amendment of the Senator from South Dakota is necessary at all?*

MR. KNOX. *In my judgment, it is wholly unnecessary.*

MR. CULLOM. That is what I thought.

MR. LODGE. Mr. President, I have received the answer I desired to receive—that the amendment is unnecessary.

THE VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from South Dakota [Mr. Kittredge].

The amendment was rejected.

(Vol. 40, Cong. Rec., pt. 7, p. 6440.)

The construction placed upon this act by the various Members of Congress, as shown from the above-quoted excerpts from their speeches, is in entire harmony with the construction placed upon it by this and other courts. (*United States v. Union Stock Yard*, 226 U. S. 286; *Southern Pacific*

Terminal Co. v. Interstate Comm. Comn., 219 U. S. 498; *United States v. Milwaukee Refrigerator Transit Co.*, 145 Fed. 1007; *Interstate Comm. Comn. v. Reichmann*, 145 Fed. 235; *Atchison, T. & S. Ry. Co. v. United States*, 232 U. S. 199; *Pennsylvania Co. v. United States*, 236 U. S. 351.)

This is the construction placed on the act by Judson. "The act has been amended, see section 1, *supra*, in accordance with recommendations of the Commission, so that the private cars by whomsoever owned, used in transportation and refrigeration, and all the facilities of transportation used in interstate commerce, are under the control and regulation of the Commission. While the owner of the private cars is thus under the control of the Commission, the carrier is none the less responsible for all the necessary incidents of transportation and is bound to furnish them to all without discrimination and without undue preference." Judson, *Interstate Commerce*, § 253.

It is submitted that it is also the construction placed upon the act by the Armour Car Lines, since, as the record shows (pp. 118, 119), its employees, in the performance of their duties, accepted and used passes issued by the railroads with which it was under contract to furnish cars and refrigeration. If Armour Car Lines is not a common carrier, it has no right to accept such passes from the railroads. By their acceptance it represents itself to be a common carrier subject to the act.

It is further submitted that this is the reasonable construction to place upon the statute. Congress was not, in its endeavor to correct great abuses,

seeking a nice definition of the term "common carrier," but was exerting itself to provide, and by this act did provide, an effective means for regulating private car lines and preventing discriminations and unreasonable rates.

The common carrier may be a single legal entity or consist of two or more of such entities. In other words, the duties of the common carrier as defined by statute may be divided among several, each performing only a part of the functions of the common carrier. In such case all of the elements constitute the common carrier and the regulation of any single one is just as important and permissible as the regulation of the other elements. If, as in this case, the railroad performs only a part of the work and another corporation supplements it so that the acts of both are necessary fully to perform the duties of the carrier, the two constitute the legal common carrier and each is such carrier in the eyes of the law.

This record demonstrates that Armour Car Lines is performing just such supplementary services. Its business consists entirely of undertakings peculiarly within the functions of a common carrier as defined by the Act, as appears from appellant's reply to the question: "I will ask the witness if owning, manufacturing, rebuilding, repairing, renting and leasing of cars, and furnishing ice and refrigeration service is all of the business in which Armour Car Lines are engaged?" Appellant answered, "Yes, practically so. There might be something else that I have overlooked but I think not." (Record p. 112.) In his brief appellant further says, on page 4, "It (Armour

Car Lines) derives no revenue from the cars or from their use beyond the rentals paid by railroads and shippers."

Armour Car Lines has dedicated its property and devoted its entire business to the transportation of goods by railroad. Its business, therefore, is just as much affected with a public interest as is that of a railroad, and its proper conduct and regulation is equally as vital to the public welfare. It has just the same powers, within the sphere of its activities, to throttle business by its extortionate charges or to discriminate among shippers, as have the railroads. By its exclusive contracts, forbidding a railroad to purchase the service of any other car line, it becomes the exclusive agency of transportation of all goods requiring refrigeration. If it fails the railroad, transportation of this character can not be furnished the shipper. If its charges are extortionate the shipper, through the railroad, must pay.

If the private car line is not a common carrier subject to the control of the Commission but is permitted to lease cars and to furnish refrigeration to railroad and to private shippers at whatever prices it deems proper, as it is now doing, then it rests completely within its unregulated power on the one hand to force shippers to pay whatever it may choose to charge and on the other to grant rebates and favors to any shippers who may lay claim to its favor, whether because of intercorporate relationship or of mere caprice.

This could not have been the purpose of Congress in framing this great remedial statute. It was in-

tended, we submit, to correct great evils, everywhere recognized and affecting the welfare of the whole country.

That the act to regulate commerce was intended to afford an effective means of redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act. (*Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 439.)

This Court has not given the statute a technical construction, but has time and again brushed aside devices invented to subvert its purposes and consistently enforced the spirit of the law.

We think the act should be given a practical construction, and one which will enable the Commission to perform the duties required of it by Congress. (*Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194, 213.)

To this extent and for these purposes [to secure equality of rates and to destroy favoritism] the statute was remedial and is, therefore, entitled to receive that interpretation which reasonably accomplishes the great public purpose which it was enacted to subserve. (*New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 391.)

Our duty, however, is not to destroy the law but to enforce it, and in doing so to seek to discover the intention of the lawmaker, the wrong intended to be prevented and the rem-

edy designed to be afforded by the enactment of the statute. (*United States v. B. & O. R. R. Co.*, 225 U. S. 306, 324.)

If all of the storm of public opinion, urgent messages of the President and reports of the Commission, strong statements of Senators and Congressmen, did not result in putting these private car lines under the control of the Commission and in affording it adequate means of ascertaining the reasonableness of their charges, but, on the contrary, left the private car lines, who had monopolized the business, free to charge the railroads, and thereby most certainly, though indirectly, the shippers, exorbitant prices for their services, then surely Congress has unintentionally given us the mere shell instead of the substance of a remedy.

And it needs no argument to demonstrate that the application of the principle of public policy which the statute embodies is to be determined by the substance of things and not by names, for if that were not the case the provisions of the statute would be wholly inefficacious, as names would readily be devised to accomplish such purposes. (*United States v. Louisville & Nashville R. R. Co.*, 235 U. S. 314, 326.)

All the evils sought to be remedied and the dangers to be avoided, are present in the management of a business like that of Armour Car Lines. It is engaged in "transportation" as defined by the act. The act is remedial and should be given a liberal construction. It is submitted, therefore, that the Armour Car Lines comes clearly within the spirit of the act.

II.

**ANSWERS TO QUESTIONS COMPELLABLE EVEN
THOUGH ARMOUR CAR LINES NOT COMMON CAR-
RIER SUBJECT TO PROVISIONS OF THE ACT.**

It is clear, under the decisions of this court, that answers to the questions propounded by the Interstate Commerce Commission and the production of the documents demanded by it, are compellable, whether Armour Car Lines be a common carrier subject to the act or not, (1) if the evidence sought relates to the matter under investigation, (2) if such matter is one which the Commission is legally entitled to investigate, and (3) if the witness is not excused on some personal ground.

As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one, summoned by that body to appear and to testify, the duty of appearing and testifying, and upon anyone required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the the Commission requires at his hands. These

propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion. (*Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 476.)

This phase of the case, therefore, will be discussed under these three heads, though in slightly different order.

**COMMISSION LEGALLY ENTITLED TO INVESTIGATE
MATTERS IN QUESTION.**

The power of Congress over interstate commerce is absolute and its control may be exercised through the Interstate Commerce Commission. (*Interstate Comm. Comn. v. Brimson*, 154 U. S., 447, 473, 474; *Interstate Comm. Comn. v. Goodrich Transit Co.*, 224 U. S., 194, 214.)

The powers of the Commission pertaining to this inquiry are granted in the following language:

Section 12 of the act, as amended March 3, 1889, and February 10, 1891, provides:

* * *; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; * * * and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. (C. 128, 26 Stat., 743.)

In section 13 of the act it is provided:

* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this act, or concerning which any question may arise under any of the provisions of this act, or relating to the enforcement of any of the provisions of this act. And the said Commission shall have the same power and authority to proceed with an inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money. (Amended June 18, 1910, c. 309, 36 Stat., 539, 550.)

Section 15 of the act provides:

That whenever, after full hearing upon a complaint made as provided in section thirteen of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act

for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. * * *

* * * If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reason-

able, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section. (Amended June 18, 1910, c. 309, 36 Stat., 539, 551.)

It was under the authority of and in performance of the duties imposed by these sections and the Elkins Act (Feb. 19, 1903, c. 708, 32 Stat., 847, amended June 29, 1906, c. 3591, 34 Stat., 584, 587) that the Commission, upon its own motion, was proceeding when the present controversy arose.

The several orders made by the Commission during the progress of the investigation, which indicated the various lines of inquiry to be pursued, are included in and made part of the last order, so that it alone need be quoted. It is as follows (Rec., pp. 7, 8):

No. 4906.

IN THE MATTER OF PRIVATE CARS.

SECOND SUPPLEMENTAL ORDER.

It appearing that on the 5th day of June, 1912, an order in the above-entitled investigation was entered, reading as follows:

"It appearing from complaint now on file with the Commission that the allowances paid by carriers subject to the act to regulate commerce for the use of private cars,

the practices governing the handling and icing of such cars, and the minimum carload weights applicable to the commodities shipped therein, are unjust, unreasonable, unduly discriminatory and otherwise in violation of the act to regulate commerce and the acts amendatory thereof or supplementary thereto;

"It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by this Commission on its own motion into and concerning the practices of all carriers by railroad subject to the act to determine whether such allowances, practices, or minimum carload weights are unjust, unreasonable, or unduly discriminatory or otherwise in violation of said act with a view to the issuance of such order or orders as may be necessary to correct discriminations and to make applicable reasonable weights.

"It is further ordered, That all carriers by railroad subject to said act be made parties respondent to this proceeding, and that copies of this and any subsequent order entered herein be served upon said respondents."

It further appearing that on the 8th day of October, 1912, a supplemental order in the above-entitled case was entered, reading as follows:

"It appearing that there is much complaint from growers of fruits and vegetables and dealers in fish shipping these articles from points on the line of the Atlantic Coast Line Railroad Company in North Carolina to points north and east, on its own line and connections, such as Washington, D. C., Baltimore,

Md., Philadelphia, Harrisburg, and Pittsburgh, Pa., New York, Albany, and Buffalo, N. Y., Providence, R. I., and Boston, Mass., that the said carriers constantly fail to furnish an adequate and prompt supply of refrigerator cars suitable for the transportation in question, and likewise fail to perform said transportation with reasonable expedition, by reason of which inadequacies in equipment and service the shippers of these commodities as aforesaid are subjected to substantial and irreparable damage;

"It is ordered, That a hearing or hearings be had with respect to the above-stated matters, in connection with the general investigation now under way before the Commission in the proceeding entitled 'In the Matter of Private Cars,' at such times and places as the Commission may hereafter designate."

And it further appearing that certain individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce are necessary parties to this proceeding;

It is ordered, That all individuals, firms, companies, and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce be, and they hereby are, made parties respondent to this proceeding.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,

Secretary.

It appears from these orders that the questions under investigation were, as far as pertinent in this case, whether allowances paid for the use of private cars and the practices governing the handling and icing of same were unjust, unreasonable, unduly discriminatory, or otherwise in violation of the act, and whether there were inadequacies in such equipment and service.

An inquiry into these matters was clearly authorized, for the statute provides that "The Commission is hereby authorized and required to execute and enforce the provisions of this act," and these provisions expressly declare that no unreasonable or discriminatory rates or practices shall be permitted nor rebates given or received; that adequate facilities, including refrigeration and icing, shall be furnished; that reasonable compensation shall be paid to those furnishing same; and that the charge and allowance to the owner of property, transported under the act for any service directly or indirectly rendered in connection therewith or for any instrumentality used therein, shall be no more than is just and reasonable. (Secs. 1, 2, 3, and 15 of act to regulate commerce and Elkins Act, *Mitchell Coal Co. v. Pennsylvania R. R. Co.* 230 U. S. 247.)

It is submitted, therefore, that every matter which the Commission undertook to investigate in this proceeding was one which it was legally entitled to investigate, since the act, in substantially the same words used in the orders, authorized and made it the duty of the Commission to do exactly what it

was undertaking in this investigation. Here, it will be noted, we are concerned with investigation not regulation.

It is a mistake to suppose that the requiring of information concerning the business methods of such corporations, as shown in their accounts, *is a regulation of business not within the jurisdiction of the Commission, as seems to be argued for the complainants.* The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction. *Further, the requiring of information concerning a business is not regulation of that business. (Interstate Commerce Commission v. Goodrich Transit Co., 224 U. S. 194, 211.)*

THE EVIDENCE SOUGHT [RELATED TO MATTERS UNDER INVESTIGATION.

We pass to the consideration of whether the evidence sought was relevant to the issues made by the provisions of the Commission's orders.

This requires an adjustment of the evidence expected to the Commission's statement of the questions to be determined.

Anything, therefore, which related to or might throw light upon these issues was relevant in the strictest sense, although the Commission is not bound

in its investigations by the technical rules of pleadings and evidence.

The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegation and proof. (*Interstate Commerce Commission v. Baird*, 194 U. S., 25, 44.)

The issues made by the Commission's orders have been stated. An examination of the questions which appellant refused to answer discloses their relevancy. They related to the business and relations of two corporations, Armour Car Lines and Armour & Company, both of which were parties to the proceeding and had appeared pursuant to service upon them. We are not concerned with the substance of the anticipated answers, but may assume for the purposes of determining their relevancy that if the questions had been answered the information expected by the interrogator would have been adduced.

Relevancy does not depend upon the conclusiveness of the testimony offered but upon its legitimate tendency to establish a controverted fact. (*Interstate Commerce Commission v. Baird*, 194 U. S., 25, 44.)

We may further assume that the answers expected would have been in harmony with the facts as previously disclosed in the record and with the information on the subject which the Commission already possessed. An acquaintance with these facts will also throw light upon the materiality and relevancy of the questions asked.

The following facts had been developed during the hearing. It was the practice of private car lines to make exclusive contracts with railroads whereby the latter contracted to use none but the cars of the former (Rec., p. 78); that in addition to furnishing the cars, they also furnished refrigeration and icing for them under contracts with railroads, and in some instances with favored shippers; that usually these favored shippers were related in interest to the private car lines (Rec., p. 93); that Armour Car Lines had so contracted with Armour & Company (Rec., p. 108); that the car lines determined for themselves the amount of ice and salt put in bunkers of refrigerator cars and the shippers had to rely upon them "absolutely for all information respecting the actual furnishing of ice" (Rec., p. 40); that local conditions had a great deal to do with cost of materials and value of services (Rec., p. 75); that there were many complaints that the private car lines "do not treat all those cars alike" (Rec., p. 42); and that favored shippers, usually allied companies, were given the best equipment and icing service (Rec., p. 78).

It also appears from the eighteenth annual report of the Interstate Commerce Commission to Congress,

1904, that the Commission was aware that "the stockholders of Armour & Company own the stock of the Armour Car Lines" (p. 15), and that "at the present day all the above car companies (Fruit Growers Express, The Kansas City Fruit Express, Continental Fruit Express, and the Armour Refrigerator Line), have been absorbed by the Armour Car Lines Company, which has to-day, in our opinion, a practical monopoly of the movement of fruit in large quantities in most sections of this country." (Idem, p. 14.)

With these facts in mind the Commission was investigating, as expressly stated in the orders, whether the allowances paid to private car lines and the practices governing the handling and icing of cars were unjust, unreasonable, discriminatory, or otherwise in violation of the act and whether the service furnished was adequate.

It is evident that if the railroads pay exorbitant allowances to private car lines for rental of cars, it would be in violation of the act, because it expressly provides that only just and reasonable compensation may be paid and because unfair allowances would result in unjust and unreasonable rates to shippers and high prices to consumers.

Neither party has a right to insist upon a wasteful or expensive service for which the consumer must ultimately pay. The interest of the public is to be considered as well as that of the shippers and carriers. (*Atchison, T. & S. F. Railway Co. v. United States*, 232 U. S. 199, 217.)

Practices governing the handling and icing of cars would be unjust and unreasonable if they resulted in the shipper paying too much for the services rendered; they would be discriminatory if they resulted in giving to certain shippers lower rates or better service and equipment than to other shippers.

This principle has been announced by this court in cases involving the distribution of coal cars. (*B. & O. R. R. Co. v. Pitcairn*, 215 U. S. 481; *Interstate Commerce Commission v. Illinois Central R. R. Co.*, 215 U. S. 452.)

Whatever, therefore, related to any of these inquiries was relevant to the issues as outlined in the orders of the Commission.

Armour Car Lines had icing plants in various parts of the country. Local conditions determine the cost of refrigeration and icing of cars. It was, therefore, proper and necessary, in order to determine whether the allowances paid the Armour Car Lines were just and reasonable, for the Commission to make detailed investigation concerning local conditions and costs of service and materials at the various points. (*Minnesota Rate Cases*, 230 U. S., 352, 434; *Smyth v. Ames*, 169 U. S., 466, 546.) It was also proper and relevant to inquire in to the income, profits, etc., derived from the business of Armour Car Lines, since its business was devoted to, and practically its entire income derived from, services in connection with transportation as defined by the act, furnished either to the railroads or shippers.

Questions relating to these matters grouped under classes five and six, page 3, are therefore relevant.

Appellant's contention to the contrary amounts to this, that the Commission, although the act expressly gives it the power and imposes upon it the duty to see that only just and reasonable allowances are paid for such service, is precluded, in an investigation to determine what is a reasonable allowance, from obtaining such evidence by compulsion from any individual or corporation except the railroad company. In other words, the railroad may appear and testify that it paid, to a company having a monopoly of the business, a certain price for the services rendered, that this was the lowest price it could obtain, and that it had no knowledge of the actual value or cost of the service. Thereupon, any witness, having knowledge of such value and cost, might refuse to testify, whether he be the person furnishing the service or not, thereby making it impossible for the Commission to determine what is a reasonable charge for the service.

We are only here concerned with the question of relevancy. The question of privilege is discussed below.

Questions grouped under classes one, two, and three, page 2, are relevant to the inquiry as to whether practices governing the handling and icing of cars are unjust, unreasonable, unduly discriminatory, and otherwise in violation of the act to regulate commerce and "the acts amendatory thereof or supple-

mentary thereto." This issue presents two phases, discrimination in service and discrimination in rates.

Discrimination in service may result from any device by which some shippers receive better equipment or better service than others. Certain shippers claim that their competitors, who were fortunate enough to lease cars direct from the private car line companies, secured prompter service and better cars than they did (Rec., pp. 78, 79); that only old equipment was furnished them, and as a consequence their products never reached the market in as good condition as their competitors (Rec., p. 79); and that discrimination was also shown to the same favored shippers in the refrigeration and icing of cars. Some of these complaints were against Armour Car Lines (Rec., pp. 79, 80).

Questions grouped under classes one, two, and three were asked for the purpose of ascertaining whether or not such discriminatory treatment was being afforded Armour & Company.

Armour Car Lines, under contracts, which it refused to disclose, furnished cars to Armour & Company, and possibly to a few favored shippers, perhaps allied with it.

We (Armour Car Lines) are only under contracts to furnish Armour & Company cars, but we do furnish them to some of the other packers there, but not in large quantity. (Rec., p. 93.)

It is readily seen that, if Armour & Company secured these cars, and presumably the best of them,

at a price less than the railroads paid Armour Car Lines and less than the charge for similar cars and services other shippers had to pay, Armour & Company by such device would receive such discriminatory service as would amount to a rebate. Appellant complains that the word "rebate" is not mentioned in the order of the Commission under which the investigation was proceeding. This was entirely unnecessary, though it is alleged in the petition in this suit, because the word actually used in the orders "discrimination" includes rebate, which is merely an aggravated form of discrimination, and the order expressly recites that the inquiry extends to discriminations under the act to regulate commerce, and also all "acts amendatory thereof and supplementary thereto," which, of course, includes the Elkins Act dealing specifically with rebates.

The same form of discrimination might result also in a violation of section 15 of the Act, which provides that no charge or allowance shall be permitted the owner of property transported under the act, directly or indirectly, for any service rendered in connection with such transportation or for any instrumentality used therein, which is not just and reasonable.

It was very important, therefore, for the record to show the exact relationship existing between the two Armour companies and the terms of their contracts with respect to cars furnished thereunder and the refrigeration and icing of same.

If the Commission is precluded from investigating the character of the relations and contracts between

a shipper and a subsidiary company organized for the very purpose of securing discriminatory service and rates, there is no reason why by this simple device discriminatory service and rates may not be granted to such favored shipper as freely as they were before the passage of the act forbidding same.

This court has held that this may not be done by a subsidiary company organized by the railroad. The same principle would forbid such evasion by the shipper. (*Interstate Commerce Commission v. Baird*, 194 U. S., 25; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *Armour Packing Company v. United States*, 209 U. S., 56; *United States v. Union Stock Yard & Transit Co.*, 226 U. S., 286, 309; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S., 498.)

Any evidence, therefore, which would tend to show that the Armour Car Lines was merely a device used by Armour & Company, a great shipper of meat products using refrigerator cars, of which it was formerly the owner, to cover discriminatory treatment in matters of transportation, is highly material and relevant under the very words of the orders under which this investigation was proceeding.

The remaining questions which were asked and which appellant refused to answer are included in group four. They are relevant, as tending to show that Armour Car Lines business was exclusively that of one engaged in transportation as defined by the act, and to disclose the relations existing between it and the railroads with respect thereto.

**APPELLANT NOT EXEMPT FROM ANSWERING QUESTIONS
PROPOUNDED.**

We have seen above that the questions asked appellant related to matters under investigation which the Commission was legally entitled to investigate. He was, therefore, properly required to answer the questions propounded and produce the documents demanded, unless he could establish a privilege personal to himself.

The duty of the citizen to testify is well expressed in the following quotation:

For three hundred years it has now been recognized as a fundamental maxim that the public (in the words sanctioned by Lord Hardwicke) has a right to every man's evidence. We may start, in examining the various claims of exemption, with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional and are so many derogations from a positive general rule. (3 Wigmore on Evidence, sec. 2192.)

Appellant's refusal to answer the questions asked was not based upon any personal privilege. The objection offered was "That the question relates to the private business and affairs of Armour Car Lines; that, neither under the act of Congress nor under the orders which have been entered in this proceeding, has this Commission any jurisdiction, right, or authority to inquire into such matters or to demand the information which the question calls for." (Rec., p. 90.)

In the brief appellant claims no other privilege than that of privacy. "Our contention is that under the law and the Constitution the Commission has no jurisdiction or authority whatever to invade the private affairs of a corporation which is not a common carrier by railroad engaged in transportation within the meaning of the interstate commerce act." (Appellant's brief, p. 112.)

The part of the objection relating to the Commission's authority to investigate the matters in controversy has been discussed, and it remains, therefore, only to consider whether the objection "That the question relates to the private business and affairs of Armour Car Lines," is well founded in fact or law.

Inquiry into the matters covered by the questions asked would not constitute an invasion of the right of privacy, even if Armour Car Lines were entitled, as it is not, to claim such privilege.

These questions sought, as those in Groups 1 and 2, information which is either freely given to the public or recorded in official records; or as those in Groups 3 and 4, facts of vital importance to the public as affecting interstate commerce; or as those in Groups 5 and 6, facts which are annually given to the Government officials in the form of income-tax returns, not only by Armour Car Lines and Armour & Co., but by every other corporation earning more than a certain income. Indeed Armour Car Lines had itself furnished precisely this information for

three years of its business. Why was such information concerning other years so private?

Testimony relating to such facts, given in a formal proceeding before the Interstate Commerce Commission, after hearing before and judgment of a District Court requiring same, presents scarcely a suggestion of violation of the right of privacy, or of unreasonable search or seizure.

Furthermore, on account of the nature of the business transacted by Armour Car Lines, it can not properly be considered private, nor an inquiry into same a violation of the right of privacy. Undoubtedly, and admittedly, if the business transacted by Armour Car Lines had been performed by a railroad company, every part to the minutest detail might be investigated by the Commission. Does the mere fact that such business is transacted by one corporation rather than another affect its nature? If compulsory testimony in the one instance is not a violation of the right of privacy, why should it be in the other? The matters in question involve a great public interest—transportation in interstate commerce—over which Congress's power is absolute. Armour Car Lines business consists entirely of "transportation," as defined by the act to regulate commerce. Its business is affected with a public use, since its agencies are carried on in a manner to make them of public consequence. Therefore, having devoted its property to a use in which the public has an interest, it in effect has granted to the public an interest in that use and must submit to public

control for the common good to the extent of such interest. With respect to such business it has no more right to privacy than railroads engaged in the same or similar undertakings.

It is submitted, therefore, that appellant has not shown, as a matter of fact, that the investigation in question would violate the privilege of privacy, even if Armour Car Lines might claim same.

But, be this as it may, no corporation, whether public service or private, has any privilege of privacy which would justify a refusal to answer the questions and produce the documents demanded in this proceeding.

But the corporate form of business activity, with its chartered privileges, raises a distinction when the authority of government demands the examination of books. That demand, expressed in lawful process, confining its requirements within the limits which reason imposes in the circumstances of the case, the corporation has no privilege to refuse. It can not resist production upon the ground of self-incrimination. Although the object of the inquiry may be to detect the abuses it has committed, to discover its violations of law and to inflict punishment by forfeiture of franchises or otherwise, it must submit its books and papers to duly constituted authority when demand is suitably made. This is involved in the reservation of the visitatorial power of the State, and in the authority of the National Government where the corporate activities are in the domain subject to the powers of Con-

gress. (*Wilson v. United States*, 221 U. S., 361, 382. See also *Wheeler v. United States*, 226 U. S., 478; *Grant v. United States*, 227 U. S., 74, 79; *B. & O. R. R. Co. v. Interstate Commerce Commission*, 221 U. S., 612, 622; *Brown v. Walker*, 161 U. S., 591.)

Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of the corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. * * *

Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only reserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty inquire how these franchises had

been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. * * *

* * * Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular in the vindication of its own laws, are the same as if the corporation had been created by an act of Congress. It is not intended to intimate, however, that it has a general visitatorial power over State corporations. (*Hale v. Henkel*, 201 U. S. 43, 74, 75.)

In *Hale v. Henkel*, 201 U. S. 43, 75, while general visitatorial power over State corporations was not asserted to be within the power of Congress, it was nevertheless declared as to interstate commerce that the General Government had, in the vindication of its own laws, the same power it would possess if the corporation had been created by the act of Congress. (*Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194, 215.)

Appellant quoted at length from several decisions to show that the District Court erred in requiring the questions to be answered.

In considering these decisions it should be kept in mind that this case is not an attempt by the Commission to regulate private car lines, as suggested by appellant, but to secure information essential to the regulation of dealings between them and the railroads; it is not a general inquisitorial investigation solely to get information of the private affairs of a citizen, but an investigation of certain affairs of a corporation based upon complaints of specific violations of the act; it is not an attempt of a special examiner under section 20 of the act to gain access to the correspondence of a railroad, but a demand that a witness, present in response to subpoena, answer certain questions, asked in an investigation conducted before the Commission in the manner of judicial investigations.

With the question in issue clear, the cases cited by appellant are obviously not in point.

In the *Employers' Liability Cases*, 207 U. S. 463, and in *Hopkins v. United States*, 171 U. S. 578, the sole question before the court was whether Congress could regulate an intrastate matter. These cases do not concern the right of Congress to authorize an investigation into matters connected with interstate transportation.

The *Pacific Railway Comn. case*, 32 Fed. 241, is overruled by *Interstate Commerce Commission v. Brimson*, 154 U. S. 447.

The case of *Harriman v. Interstate Commerce Commission* involved solely the right of the Commission to institute a general investigation for the purpose

of recommending legislation. The Court expressly confined its decision to this ground. Mr. Justice Holmes says:

Many broad questions were discussed in the argument before us, but we shall confine ourselves to comparatively narrow ground. The contention of the Commission is that it may make any investigation that it deems proper, not merely to discover any facts tending to defeat the purposes of the act of February 4, 1887, but to aid it in recommending any additional legislation relating to the regulation of commerce that it may conceive to be within the power of Congress to enact; and that in such an investigation it has power, with the aid of the courts, to require any witness to answer any question that may have bearing upon any part of what it has in mind. (*Harri-man v. Interstate Comm. Comn.*, 211 U. S. 407, 417.)

The case of *Kilbourn v. Thompson*, 103 U. S. 168, has no resemblance to the present case. There the question involved was the constitutional power of the House of Representatives to force a witness to testify concerning matters beyond the jurisdiction of the House.

The extent of the holding of the Court in the case of *Boyd v. United States*, 116 U. S. 616, was "that a compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property, is within the scope of the Fourth Amendment of the Constitution, in all cases in which

a search and seizure would be," as stated in *Hale v. Henkel*, 201 U. S. 43, 71.

The case of *United States v. Louisville & Nashville R. R. Co.*, 236 U. S. 318, decided at this term, involved only the construction of the words "accounts, records, and memoranda," found in section 20 of the act, and has no relation to the powers of the Commission, under sections 12 and 13 of the act, to compel, with the aid of the Court, answers to questions relevant to an investigation into alleged violations of the act.

CONCLUSION.

The judgment of the District Court should be affirmed and appellant required to answer the questions propounded and produce the documents demanded.

Respectfully,
E. MARVIN UNDERWOOD,
Assistant Attorney General.

APRIL, 1915.

APPENDIX.

QUESTIONS PROPOUNDED TO F. W. ELLIS AND BY THE COURT ORDERED ANSWERED.

[Court's order, Rec., pp. 137-142. Figures in parentheses following each question indicate the page of the record where question and its context appear.]

1. What position does he [C. B. Robbins, Pres., Armour Car Lines] hold with Armour & Company? (90)

2. What position does Mr. J. Ogden Armour hold with Armour & Company, or what is his connection with Armour & Company? (90)

3. Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relations with or to Armour & Company? (90)

4. How was title to the cars held by Armour & Company and by Armour Packing Company passed to Armour Car Lines? (91)

5. How were the cars of Armour Car Lines, the corporation that began in March, 1901, acquired? (91)

6. I understand, then, that Armour Car Lines is unwilling to state under what circumstances or conditions it acquired the equipment with which it does business? (91)

7. Who are the officers of the Fowler Packing Company? (92)

8. Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Company for furnishing cars at different points, called for by any contract that exists? (93)

9. What is the nature of the understanding? (94)

10. In the next column, Mr. Ellis, under the head of other property, appears nothing at all. Did Armour Car Lines own any property other than their rolling stock? (102-3)

11. Where are the cars of Armour Car Lines repaired when not repaired in shops of railroads? (103)

12. With who- is settlement made, or by whom is settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Company? (107)

13. Is that for all ice furnished Armour & Company or just in certain instances that you so bill direct? (108)

14. Do Armour Car Lines manufacture all of their own equipment? (111)

15. Mr. Ellis, the Armour Car Lines were asked by the Interstate Commerce Commission to furnish, and I quote now from the written request, "an income statement showing in detail the credits to income from all sources and the debits to income of whatever nature and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year."

I now ask you for the same statement with this modification that the Commission desires an income statement showing in detail the credits to income and the debits to income of whatever nature and the total credits and total debits as shown by the books of the Armour Car Lines, as a corporation, for its last fiscal year for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation, as that term is defined in section 1 of

the act to regulate commerce. I ask you if such a statement will be furnished? (112)

16. Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines? (114)

17. Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business? (114)

18. What is done with the cars manufactured by Armour Car Lines? (114)

19. Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines? (114)

20. Will you furnish an income statement showing in detail the credits to income and the debits to income of whatever nature, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting, and leasing cars, and furnishing icing and refrigeration service? (114)

21. Please furnish a statement showing in detail all credits and all debits to profit and loss, and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation, for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting, and leasing cars, and furnishing icing and refrigeration service. (114)

22. Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the

end of its last fiscal year; and by icing station is meant station at which icing and refrigeration is done? (115)

23. Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines; this statement to show the amount invested in each plant or icing station; the point or points at which the supply of ice was obtained for each station; the cost per ton at the source of supply; the freight rate per ton if transported by rail from point of supply to storage house; the cost per ton of labor and other expenses incident to storing; the total cost per ton placed in storage plants; the total cost per ton placed in bunkers or tanks of refrigerator cars; this statement also to show the number of tons stored in each house during the year; the number of tons sold or otherwise disposed of; actual or estimated loss in tons from meltage; total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation. (115)

24. Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines? (116)

25. Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed? (116)

26. Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour Car Lines for the last fiscal year after the books were

closed; these two requests being made separately. (116)

27. The question referred to asked for information from the date of incorporation of Armor Car Lines. I ask you now if you will give us information to the extent that you have already given it for those three years, to cover the period from the date of incorporation of Armour Car Lines? (117)

28. Mr. Ellis, why did Armour Car Lines report the last three years and not any further? Why did they stop at 1910? (117)

○

APR 12 1915

JAMES B. HAYES

CLERK

No. 712

In the Supreme Court of the United States

OCTOBER TERM, 1914.

FREDERICK W. ELLIS, APPELLANT,

v.

INTERSTATE COMMERCE COMMISSION, APPELLEE.

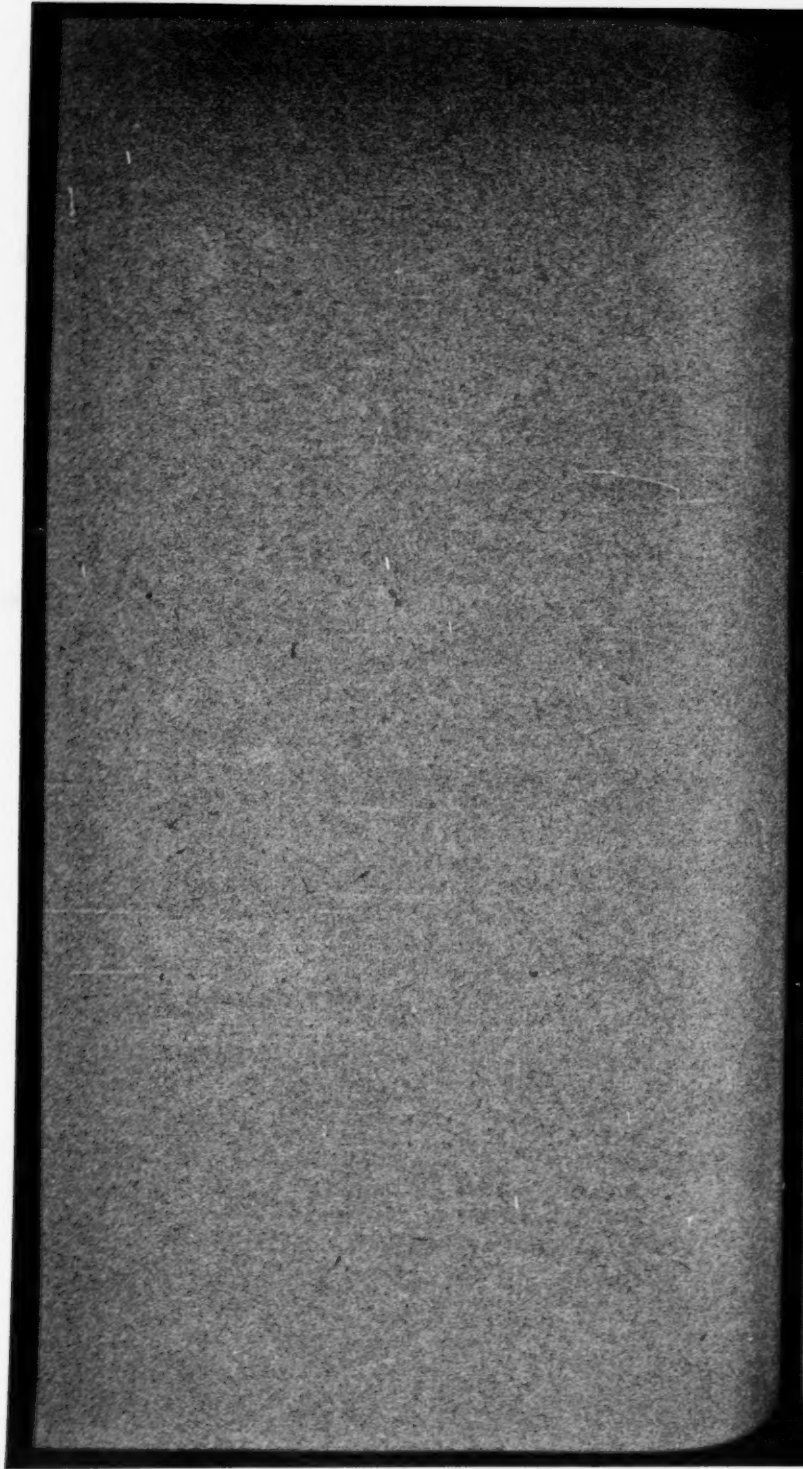
BRIEF FOR INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,

EDW. W. HINES,

Counsel for the Interstate Commerce
Commission.

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SYNOPSIS AND INDEX.

	Page.
STATEMENT OF THE CASE	1
Questions required by decree of the District Court to be answered	4
QUESTIONS INVOLVED	11
1. Is the order of the District Court requiring Ellis to testify in the proceeding before the Commission appealable?	11
2. Were the orders of the Commission which formed the basis of the investigation suffi- cient to authorize the inquiry as to whether or not the Armour Car Lines was being used as a device to favor Armour & Co?	11
3. Was the investigation to the extent that its purpose was to make such an inquiry one in which witnesses could be compelled to tes- tify?	11
4. Was the testimony relevant to the inquiry? ..	11
5. Are the witnesses who may be compelled to testify before the Commission limited to offi- cers and agents of common carriers?	11
6. Would it unnecessarily invade the privacy of the corporation to compel the testimony to be given?	11
7. May the Commission investigate the practices of private car lines acting as agents of rail- road common carriers?	11
ARGUMENT	12
I. Is the order of the District Court requiring Ellis to testify in the proceeding before the Commission appealable?	12

ARGUMENT—Continued.

Page.

Brimson, Baird, and Harriman cases distinguished.

Final decrees only are appealable. An order requiring the production of testimony is not a final decree. (*Alexander v. U. S.*, 201 U. S., 117; *Webster Coal & Coke Co. v. Cassatt*, 207 U. S., 181; *Wise v. Mills*, 220 U. S., 549; *Haight v. Robinson*, 203 U. S., 581; *Hultberg v. Anderson*, 214 Fed., 349; *Logan v. Pennsylvania R. Co.*, 19 Atl., 137.) "Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court?" (*Alexander v. U. S.*, 201 U. S., 117.)

It is respectfully submitted that this appeal should be dismissed.

II. The orders of the Commission on which the investigation was based were sufficient to authorize the Commission to inquire whether or not Armour Car Lines was being used as a device to procure favors for Armour & Co. from the railroads.....

20

The purpose of the hearing at which appellant refused to testify, as indicated in the Commission's order providing therefor, was to determine whether or not the allowances paid by carriers for the use of private cars and the practices governing the handling and icing of such cars were unjust, unreasonable, unduly discriminatory, or otherwise in violation of the act. The interest of Armour & Co., and of other shippers, in the car lines furnishing such facilities was of the essence of the inquiry.

Investigations on the part of the Commission should not be hampered by the technical rules of the common law. (*I. C. C. v. Baird*, 194 U. S., 25, 44.) As to questions in issue Armour Car Lines was not taken by surprise.

ARGUMENT—Continued.

Page.

III. The investigation in which appellant was called as a witness related to specific matters which might be made the object of a formal complaint, and was therefore one in which witnesses could be required to testify.....

22

Sections 1, 2, 12, 13, and 15 of the act to regulate commerce and sections 1 and 2 of the Elkins Act, cited.

The Elkins Act authorized inclusion as parties, "in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration." Armour Car Lines and Armour & Co. were served with copies of the Commission's orders and were made formal parties to the investigation in which appellant refused to testify.

One purpose of the inquiry was to determine whether or not the practices under investigation were resulting in unlawful discrimination. *Harriman v. I. C. C.*, 211 U. S., 407, distinguished.

IV. The information which the witness was asked to give was relevant to the inquiry which the Commission was making.....

27

The questions in issue were material as tending to show the relation between Armour & Co., the shipper, and Armour Car Lines, the corporation furnishing transportation and refrigeration facilities to common carriers; also as tending to show a practice of rebating under the guise of allowances from common carriers to Armour & Co. through the instrumentality of Armour Car Lines.

Cotting v. K. C. Stock Yards Co., 183 U. S., 79, illustrative rather than exclusive of this proposition.

ARGUMENT—Continued.

Page.

If the questions had a legitimate bearing upon the identity of Armour & Co. and Armour Car Lines, answers thereto were properly to have been compelled. (*I. C. C. v. Baird*, 194 U. S., 25, 47; *Nelson v. U. S.*, 201 U. S., 92.)

It is not contended that a corporation selling *supplies* to a railroad common carrier thereby subjects itself to the jurisdiction of the Commission. The contention is that a *shipper* may, through a corporation furnishing transportation facilities to such a common carrier, obtain rebates or concessions in the guise of allowances therefor, and that the Commission has jurisdiction to investigate the relations between such *shipper* and the corporation furnishing such facilities, in order to determine whether or not the latter is being used as a device to conceal rebates.

The questions asked were material as tending to advise the Commission as to the *reasonableness* of the allowances paid by common carriers for the services rendered by Armour Car Lines. It is the duty of the Commission to abate discriminative practices, "whatever form they may take and in whatsoever guise they may appear." (*Tap Line Cases*, 234 U. S., 1.)

The power of the Commission to inquire into the allowances of a tap line is based not upon the fact that the tap line is a common carrier, but upon the fact that it is owned by a *shipper*. A *shipper* owning a tap line is subject to the jurisdiction of the Commission with respect to the relations between the tap line, the *shipper*, and railroad common carriers. It is the duty of the Commission to inquire fully into such relations in order to determine whether or not the *shipper* by means of the tap line is securing concessions from the published rates. (*Tap Line Cases*, 234 U. S., 1.)

ARGUMENT—Continued.

Page.

The Elkins Act was designed to place all shippers upon equal terms. (*U. S. v. Union Stock Yard Co.*, 226 U. S., 286; *I. C. C. v. Reichmann*, 145 Fed., 235.)

A witness, not a party to the proceeding, may not question on behalf of the corporation, a party thereto, the materiality of evidence. (*Nelson v. U. S.*, 201 U. S., 92.)

V. The witnesses who may be compelled by the courts to give testimony before the Commission and to produce documents, books, and papers are not limited to officers and agents of common carriers.

45

The Commission may require any person to testify before it if the testimony required relates to a matter under investigation, if such matter is one which the Commission is legally entitled to make, and if the witness is not excused on some personal ground from compliance with the Commission's order to testify. (*I. C. C. v. Brimson*, 154 U. S., 447.)

Congress, in excluding private car lines from the operation of the statute, was endeavoring to conserve the interests, not of private car lines, but of shippers. Clearly it did not intend thereby to deny to the Commission the power to require such corporations to disclose any information which might be necessary to enable the Commission to enforce the provisions of the act.

Jurisdiction over interstate transportation gives to the Commission jurisdiction over any person furnishing any part of that transportation, as to the transportation so furnished, whether or not such person is a common carrier.

ARGUMENT—Continued.

Page

- VI.** To require the Armour Car Lines, or its officer, to state what its books show, as to the result of its operations relating to its business of renting and leasing cars and furnishing refrigeration and icing service, would not unnecessarily invade the privacy of that corporation.....

51

Congress has the same authority to require Armour Car Lines to furnish to the Commission any information which may be necessary to enable it to determine whether or not the act is being violated as it would have if that corporation had been created by an act of Congress. (*Hale v. Henkel*, 201 U. S., 43; *I. C. C. v. Goodrich Transit Co.*, 224 U. S., 194.) *U. S. v. Louisville & Nashville R. Co.*, 236 U. S., 318, distinguished.

- VII.** The services furnished by car lines are furnished by them either as agents for the carriers or as agents for the shippers, and the Commission may investigate the charges for and the practices relating to such services as if such services were furnished directly by the carriers or the shippers.....

60

The act requires common carriers to furnish everything defined therein as transportation. A shipper may furnish on behalf of a carrier certain facilities required to be furnished, receiving therefor a reasonable allowance. Any person who performs such a service thereby subjects himself to the jurisdiction of the Commission to the extent necessary to enable the Commission to determine what is a reasonable allowance for the service so rendered.

Armour Car Lines furnish a transportation service which it is the duty of common carriers to provide, and must be regarded as performing that

ARGUMENT—Continued.

Page.

service on behalf of such carriers within the purview of section 1 of the Elkins Act. The jurisdiction of the Commission therefore, for the purposes of this case, extends to Armour Car Lines as fully as if it were a common carrier subject to the act.

CONCLUSION

63

The questions propounded to Mr. Ellis, which he declined to answer and which he was required by the order of the District Court to answer, were material to issues cognizable by the Commission. Answers to such questions, if furnished, might have disclosed a violation of the act to regulate commerce or of the Elkins Act. Mr. Ellis, not being a party to the proceeding before the Commission, could not properly refuse to answer on the ground of personal privilege, nor could he plead the privilege of the corporation. Armour Car Lines, for the purposes of this proceeding, was as clearly amenable to the inquisitorial jurisdiction of the Commission as if it were a common carrier subject to the act. A reversal by this court of the judgment of the District Court would go far towards defeating the purposes for which the Commission was created. Wherefore it is respectfully submitted that the order of the District Court requiring Mr. Ellis to testify and to produce the documents in issue should be sustained.

TABLE OF CASES.

	Page.
<i>Alexander v. United States</i> , 201 U. S., 117	15, 17, 18, 19
<i>Brown v. Walker</i> , 161 U. S., 591	13
<i>Canada Southern Railway Co. v. International Bridge Co.</i> , 8 App. Cases, 723	29
<i>Consolidated Rendering Co. v. Vermont</i> , 207 U. S., 541	57
<i>Cotting v. Kansas City Stock Yards Co.</i> , 183 U. S., 79	29
<i>Counselman v. Hitchcock</i> , 142 U. S., 547	13
<i>Gibbons v. Ogden</i> , 9 Wheaton, 1	58
<i>Haight v. Robinson</i> , 203 U. S., 581	18
<i>Hale v. Henkel</i> , 201 U. S., 43	49, 52, 55, 58
<i>Hammond Packing Co. v. Arkansas</i> , 212 U. S., 322	57
<i>Harriman v. I. C. C.</i> , 211 U. S., 407	13, 26, 27
<i>Hultberg v. Anderson</i> , 214 Fed., 349	18
<i>I. C. C. v. Baird</i> , 194 U. S., 25	13, 15, 21, 32, 58
<i>I. C. C. v. Brimson</i> , 154 U. S., 447	13, 15, 46
<i>I. C. C. v. Goodrich Transit Co.</i> , 224 U. S., 194	57
<i>I. C. C. v. Reichmann</i> , 145 Fed., 235	38, 41
<i>Logan v. Pennsylvania R. Co.</i> , 19 Atl., 137	18
<i>Nelson v. United States</i> , 201 U. S., 92	15, 18, 33, 45
<i>New York, etc., R. M. Co. v. I. C. C.</i> , 26 Sup. Ct., 272	43
<i>Northern Pacific Ry. Co. v. North Dakota</i> (Mar. 8, 1915)	31
<i>Tap Line cases</i> , 234 U. S., 1	35, 37
<i>United States v. Louisville & Nashville R. R. Co.</i> , 236 U. S., 318	58
<i>United States v. Milwaukee Refrigerator T. Co.</i> , 145 Fed., 1007	41
<i>United States v. Union Stock Yard</i> , 226 U. S., 286	37
<i>Webster Coal & Coke Co. v. Cassatt</i> , 207 U. S., 181	18
<i>Wise v. Mills</i> , 220 U. S., 549	18

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

FREDERICK W. ELLIS, APPELLANT,	}	No. 712.
v.		
INTERSTATE COMMERCE COMMISSION,		
appellee.		

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

Appellant seeks to set aside an order of the United States District Court for the Northern District of Illinois requiring him, as vice president of Armour Car Lines, to answer certain questions which he was directed by the Interstate Commerce Commission to answer, and to submit certain documentary evidence, directed by the Commission to be produced, at a hearing before the Commission, In the Matter of Private Cars, held at Chicago, Ill., January 22, 1914. The facts material to the issues are as follows:

Prior to June 5, 1912, it was conceived, by reason of certain complaints on file with the Commission, that the allowances paid by certain carriers subject to the act to regulate commerce for the use of private cars, the practices governing the handling and icing

of such cars, and the minimum carload weights applicable to the commodities shipped therein were unjust, unreasonable, unduly discriminatory, and otherwise in violation of the statutes. On that date, accordingly, a hearing was instituted by the Commission, of its own motion and by appropriate order, for the purpose of determining the facts in question, and all carriers subject to the act to regulate commerce were notified thereof and made respondents thereto.

On October 8, 1912, a supplemental order was issued by the Commission and served upon the various carriers therein designated with a view to determining whether or not such carriers were furnishing adequate refrigerator-car service to shippers of fruit, vegetables, and fish from points on the Atlantic Coast Line Railroad in North Carolina to points north and east thereof on the lines of that carrier and on connecting lines.

The Commission thereafter concluding that certain individuals, firms, companies, and corporations, other than common carriers by railroad engaged in interstate commerce, owning or operating cars and other vehicles, instrumentalities or facilities of interstate commerce, were necessary parties to the proceeding in question, on September 15, 1913, issued a second supplemental order in the premises, directing that all such individuals, firms, companies and corporations, so owning or operating cars and other facilities, be made respondents to such proceeding. This order and the prior orders were thereupon served upon

various persons and corporations owning or operating cars and other facilities, including the Armour Car Lines, a corporation organized and existing under the laws of New Jersey, and engaged in furnishing cars and refrigeration facilities to common carriers engaged in interstate transportation, and Armour & Co., a corporation organized and existing under the laws of Illinois, that corporation being a shipper of interstate traffic in cars of Armour Car Lines over the lines of the respondent railroads. Accordingly, on January 22, 1914, the Interstate Commerce Commission, pursuant to the orders hereinabove described, conducted a hearing and investigation at Chicago, Ill., for the purpose of inquiring and examining into the premises. At such hearing appellant here, Frederick W. Ellis, in response to a subpœna duly served upon him, appeared, and after being duly sworn, stated that he was vice president, and that one G. B. Robbins, was president, of Armour Car Lines. The witness assented to the statement of counsel for the Commission that the business of that corporation is: "Renting and leasing of cars, and furnishing ice and refrigeration service" (Record, p. 112). He then was asked and directed to answer certain further questions which, on advice of counsel, he declined to answer, and to produce certain documentary evidence, which, on advice of counsel, he declined to produce. The Commission thereupon instituted in the United States District Court for the Northern District of Illinois, Eastern Division, proceedings whereby the witness might be compelled

to answer the questions asked and to furnish the information sought to be disclosed. In pursuance thereof, a hearing was held before District Judge Landis at Chicago, Illinois, on February 19-20, 1914, wherein the facts and circumstances in the premises were fully considered by the court; whereupon the respondent was ordered and directed by the court to answer the questions which he had declined to answer and to produce the documentary evidence which he had declined to produce. Respondent, in due course, moved the District Court for an appeal from the judgment rendered, but on November 9, 1914, that motion was denied. An appeal was thereafter granted by Mr. Justice Van Devanter on behalf of this court, on November 17, 1914, and the judgment of the District Court is now before this court for review.

The questions propounded to Mr. Ellis which he declined to answer, and which he was required by the order of the District Court to answer, are as follows:

1. What position does he [Mr. G. B. Robins] hold with Armour & Company?
2. What position does Mr. J. Ogden Armour hold with Armour & Company or what is his connection with Armour & Company?
3. Do any of the general officers and directors of Armour Car Lines occupy any position or maintain any relations with or to Armour & Co.?
4. How was the title to the cars held by Armour & Company and by Armour Packing Company passed to Armour Car Lines?

5. How were the cars of Armour Car Lines, the corporation that began in March, 1901, acquired?

6. I understand then that Armour Car Lines is unwilling to state under what circumstances or conditions it acquired the equipment with which it does business?

7. Who are the officers of the Fowler Packing Company?

8. Will you furnish the Interstate Commerce Commission copies of your contract with Armour & Co. for furnishing cars at different points called for by any contract that exists?

9. What is the nature of the understanding (referring to a verbal agreement or arrangement with the Colorado Packing Company pursuant to which cars were furnished by Armour Car Lines to that company)?

10. In the next column, Mr. Ellis, under the heading of "Other property" appears nothing at all. Did Armour Car Lines own any property other than their rolling stock?

11. Where are the cars of Armour Car Lines repaired when not repaired in shops of railroads?

12. With whom is settlement made or by whom is settlement made to Armour Car Lines for refrigeration or icing service performed for Armour & Co.?

13. Is that for all ice furnished Armour & Company or just in certain instances that you so billed direct?

14. Do Armour Car Lines manufacture all of their own equipment?

15. Mr. Ellis, the Armour Car Lines were asked by the Interstate Commerce Commission

to furnish—and I quote now from the written request—"An income statement showing in detail the credits to income from all sources and the debits to income of whatever nature and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year."

I now ask for the same statement with this modification: That the Commission desires an income statement showing in detail the credits to income and the debits to income of whatever nature and the total credits and total debits as shown by the books of the Armour Car Lines as a corporation for its last fiscal year for so much of the business of Armour Car Lines as relates to or affects the furnishing of transportation as that term is defined in section 1 of the act to regulate commerce. I ask you if such statement will be furnished?

16. Do Armour Car Lines manufacture cars for other concerns than Armour Car Lines?

17. Mr. Ellis, what do you mean by the statement that Armour Car Lines is engaged in the manufacture of cars? Do you mean that they are engaged in the manufacture of cars as a commercial proposition or as an incident to that business?

18. What is done with the cars manufactured by Armour Car Lines?

19. Is Armour Car Lines engaged in repairing cars owned by others than Armour Car Lines?

20. Will you furnish an income statement showing in detail the credits to income and

the debits to income of whatever nature and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, of so much of the business of Armour Car Lines as relates to their business of owning, renting, and leasing cars and furnishing icing and refrigeration service?

21. Please furnish a statement showing in detail all credits and all debits to profit and loss and the total credits and total debits as shown by the books and records of the Armour Car Lines as a corporation for its last fiscal year, for so much of the business of Armour Car Lines as relates to their owning, renting, and leasing cars and furnishing icing and refrigeration service.

22. Mr. Ellis, please consider this a direction to furnish. Will you please furnish a statement showing the amount invested in each icing plant or station owned wholly or in part by Armour Car Lines at the end of its last fiscal year, and by icing station is meant station at which icing and refrigeration is done?

23. Another direction, Mr. Ellis. Will you please furnish a statement showing separately and in detail the results for your last fiscal year from the operation of each icing plant or station operated by Armour Car Lines—this statement to show the amount invested in each plant or icing station, the point or points at which the supply of ice was obtained for each station, the cost per ton at the source of supply, the freight rate per ton if transported by

rail from point of supply to storage house, the cost per ton of labor and other expenses incident to storing, the total cost per ton placed in storage plants, the total cost per ton placed in bunkers or tanks of refrigerator cars? This statement also to show the number of tons stored in each house during the year, the number of tons sold or otherwise disposed of, actual or estimated loss in tons from meltage, total receipts and total disbursements in dollars and cents for each station, and the profit or loss from operation.

24. Mr. Ellis, will you please furnish on behalf of the Armour Car Lines a statement showing the credits to income and the debits to income during your last fiscal year from each and every icing plant or icing station owned solely or in part or operated by Armour Car Lines?

25. Will you please furnish a copy of the balance sheet, trial balance, as appearing on the books and records of Armour Car Lines at the end of your last fiscal year before accounts were closed?

26. Also a copy of balance sheet, trial balance, as appearing on the books and records of Armour Car Lines for the last fiscal year after the books were closed, those two requests being made separately?

27. The question referred to asked for information from the date of incorporation of Armour Car Lines. I ask you now if you will give us information to the extent that you have already given it for those three years

to cover the period from the date of incorporation of Armour Car Lines?

28. Mr. Ellis, why did Armour Car Lines report the last three years and not any further? Why did they stop at 1910?

The purpose for which the Commission sought the testimony which appellant was asked to give is thus stated in the petition:

That prior to the institution by it of the proceeding hereinafter mentioned said Commission, by reason of the premises herein described and because of evidence adduced at said hearing, concluded it was its duty to ascertain whether, through stock ownership or by some other means to your petitioner unknown, said Armour & Co. was controlling said Armour Car Lines and using the same as a device to obtain concessions from the published rates of transportation on its said shipments from said carriers, or to obtain rates of transportation on its said shipments which were less than those contemporaneously applied to the transportation of like shipments of its competitors, or to obtain for it undue and unreasonable advantage which subjected such competitors to undue and unreasonable prejudice and disadvantage; or whether said Armour Car Lines was receiving from said common carriers for furnishing refrigerator cars and ice and for performing refrigeration services, as aforesaid, unreasonable compensation, which inured to the benefit of said Armour & Co., by reason of which the provisions of sections 1, 2, 3, and 15 of said act,

above quoted, or any of them, had been or were being violated.

If the Commission is not entitled to compel the appellant to give the testimony sought for the purpose for which it has indicated in its petition that it desires the testimony, it is not entitled to have the testimony at all, and it would be useless to consider whether or not it might have been entitled to require the testimony to be given for some other purpose.

Full and frank answers to the questions asked would assist the court to determine whether or not the corporate organization of Armour Car Lines is being used in such a way as to enable its stockholders, or other persons, to procure rebates or favors of any kind from the railroads and thus to give them an undue advantage over other interstate shippers.

The questions which the appellant is required by the judgment appealed from to answer may be divided into three classes:

(1) Those which relate directly to the interest of Armour & Co. in the corporation known as the Armour Car Lines; (2) those which were intended to bring out facts which might justify the inference that such an interest existed; (3) those which relate to the reasonableness of the charges for the use of private cars and for the services of icing and refrigeration.

The questions of the third class had a twofold purpose. Those questions were intended to elicit facts which might enable the Commission to determine whether or not the allowances made to Armour

Car Lines and to other owners of private cars were so unreasonable as to amount to rebates and thus to create discrimination, and also to determine whether or not the charges made by the carriers against shippers for the services and facilities furnished by the owners of private cars were reasonable.

The restriction which the Commission by its petition has placed upon the purpose for which it desires the testimony makes the issues very simple. These issues are:

QUESTIONS INVOLVED.

1. Is the order of the District Court requiring Ellis to testify in the proceeding before the Commission appealable?

2. Were the orders of the Commission which formed the basis of the investigation sufficient to authorize the inquiry as to whether or not the Armour Car Lines was being used as a device to favor Armour & Co.?

3. Was the investigation to the extent that its purpose was to make such an inquiry one in which witnesses could be compelled to testify?

4. Was the testimony relevant to the inquiry?

5. Are the witnesses who may be compelled to testify before the Commission limited to officers and agents of common carriers?

6. Would it unnecessarily invade the privacy of the corporation to compel the testimony to be given?

7. May the Commission investigate the practices of private car lines acting as agents of railroad common carriers?

ARGUMENT.

I.

Is the order of the District Court requiring Ellis to testify in the proceeding before the Commission appealable?

This question presents a proposition not altogether free from doubt. The exact question has never been passed upon by any other court than the District Judge in this proceeding, by whom it was held that the order requiring Ellis to testify was merely interlocutory and not appealable.

Was the order requiring Ellis to testify a final order upon which a judgment by this court may be predicated? Would not the proper procedure have been for Ellis to obey the order of the court, in which event there would have been no occasion for an appeal, or for him to have refused to obey the order, in which event the court might have sentenced him for contempt? From the final order in such contempt proceedings an appeal would lie.

In other words, if an appeal is permitted from the seeming interlocutory order of the court requiring Ellis to give testimony, and this court should sustain the order of the District Court, could not Ellis again refuse to answer, and again appeal either from another order of the District Court requiring him to answer or from a judgment in contempt proceedings?

It does not seem to us that there is that finality about the order of the District Court which is essential to the jurisdiction of this court. The only case that has come before this court involving a direct

appeal from an order requiring a witness to answer questions for the Commission is the *Harriman case*, 211 U. S. 407. It should be noted, however, that in that case both Harriman and the Commission appealed, so the question was neither raised nor passed upon by this court.

In *I. C. C. v. Baird*, 194 U. S. 25, the Commission appealed to the Supreme Court directly from the judgment of the Circuit Court dismissing its petition praying that Baird be compelled to testify. An order of *dismissal* of a petition by the Commission, asking that a witness be compelled to testify, is unquestionably a final order and is not in any sense interlocutory, as an order *directing a witness to answer* questions might be considered.

In *I. C. C. v. Brimson*, 154 U. S. 447, the question was also presented of an appeal from a judgment of the Circuit Court dismissing the petition of the Commission praying that the witness be compelled to testify. As we have seen, such an order is unquestionably appealable.

In *Brown v. Walker*, 161 U. S. 591, Brown appealed to the Supreme Court, not from an order directing him to testify, but from a judgment of the Circuit Court denying him a writ of *habeas corpus*. The case grew out of his refusal to testify before the grand jury investigating alleged violations of the act to regulate commerce.

In *Counselman v. Hitchcock*, 142 U. S. 547, Counselman appealed to the Supreme Court, not from an order requiring him to testify, but from a judgment

of the Circuit Court denying him a writ of *habeas corpus*. This case also grew out of the refusal of the witness to testify before a grand jury investigating alleged violations of the act to regulate commerce.

The appeal in the instant case is predicated upon the second section of the expediting act, which reads, in part, as follows:

That in every suit in equity pending or hereafter brought in any Circuit Court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within 60 days from the entry thereof. * * *

The proceeding in the District Court was under that portion of section 12 of the act to regulate commerce reading as follows:

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court *as a contempt thereof*. * * * [Our italics]

Should not the next step after a refusal to obey an order of the court to testify be contempt proceedings

instead of an appeal to the Supreme Court? Should not the appeal be from the contempt proceedings rather than from the order requiring the witness to testify? *Nelson v. United States*, 201 U. S. 92.

The case of *Alexander v. United States*, 201 U. S. 117, seems to be controlling on this point. A witness, in a proceeding under the anti-trust act of 1890, who had refused to answer certain questions and to produce certain documents had appealed to the Supreme Court from an order of the Circuit Court directing him to answer and produce. The appeal was dismissed by the Supreme Court on the ground that the order of the Circuit Court was merely interlocutory, and did not constitute a final judgment from which an appeal would lie. Mr. Justice McKenna, in delivering the opinion of this court in that proceeding (p. 121), said:

* * * To justify the appeals, appellants contend that the orders of the Circuit Court constitute practically independent proceedings and amount to final judgments. To sustain the contention, *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, and *Interstate Commerce Commission v. Baird*, 194 U. S. 25, are cited.

Those cases rested on statutory provisions which do not apply to the proceedings at bar, and, while there may be resemblances to the latter, *there are also differences*. In a certain sense, finality can be asserted of the orders under review, so, in a certain sense, finality can be asserted of any order of a court. And

such an order may coerce a witness, leaving to him no alternative but to obey or be punished. It may have the effect and the same characteristic of finality as the orders under review, but from such a ruling it will not be contended there is an appeal. Let the court go further and punish the witness for contempt of its order, then arrives a right of review, and this is adequate for his protection without unduly impeding the progress of the case. *Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court?* Testimony, at times, must be taken out of court. In instances like those in the case at bar the officer who takes the testimony, having no power to issue process, is given the aid of the clerk of a court of the United States; having no power to enforce obedience to the process or to command testimony, he is given the aid of the judge of the court whose clerk issued the process, and if there be disobedience of the process or refusal to testify or to produce documents, such judge may "proceed to enforce obedience * * * or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court." Sections 868, 869, Revised Statutes. This power to punish being exercised, the matter becomes personal to the witness and a judgment as to him. *Prior to that the proceedings are interlocutory in the original suit.* * * * [Our italics]

Mr. Justice McKenna also in this opinion (201 U. S. 122) quotes with approval the following excerpt from an opinion by Mr. Justice Van Devanter, then Circuit Judge, disallowing an appeal from an order similar to that under review in the *Alexander* case:

I am of opinion that the mere direction of the court to the witnesses to answer the questions put to them and to produce the written evidence in their possession is not a final decision; that it more appropriately is an interlocutory ruling or order in the principal suit, and that if the witnesses refuse to comply with it and the court then exercises its authority either to punish them or to coerce them into compliance that will give rise to another case or cases to which the witnesses will be parties on the one hand and the Government, as a sovereign vindicating the dignity and authority of one of its courts, will be a party on the other hand. I have no doubt that a judgment adverse to the witnesses in that proceeding or case will be a final decision and will be subject to review by writ of error, but not by appeal. My opinion is also that the parties to the principal suit can not appeal or obtain a writ of error from that decision. [Our italics.]

It would appear that the District Court has as yet made no order against Ellis which is final. The order requiring him to testify in no way affects his liberty or his property. It is no more final than a subpœna would be with a *duces tecum* clause directing him to produce documents. An attachment for contempt

for failure to obey the order would seem to be requisite to constitute a final and appealable decree.

In *Webster Coal & Coke Co. v. Cassatt*, 207 U. S. 181, 186, the Supreme Court held that an order of the Circuit Court requiring the production of certain records was not a final decree from which an appeal would lie. This court, speaking through Mr. Chief Justice Fuller, said:

* * * The order as to them (the witnesses) was purely interlocutory, not imposing penalty or liability, and not finally disposing of an independent proceeding. * * * *if the court had power to punish disobedience or enforce compliance, then the order prior to such action on the part of the court was clearly interlocutory in the suit.* * * * There was here no attachment for contempt, no judgment on default, and no independent and collateral proceeding, the order disposing of which could be considered as a final decree. [Our italics.]

See also *Wise v. Mills*, 220 U. S. 549; *Haight v. Robinson*, 203 U. S. 581; *Hultberg v. Anderson*, 214 Fed. 349; and *Logan v. Pennsylvania R. Co.*, 19 Atl. 137.

It is urged by counsel for appellant that this case differs from the *Alexander case* and the *Nelson case* in that in the instant case the Commission filed the proceeding in the District Court praying for an order requiring Ellis to give testimony, while in those cases the orders were made by the court hearing the original causes.

We submit that there is no difference in principle between the two classes of cases. The Commission has no power to punish for contempt, and in the event of a refusal of a witness to testify before the Commission the procedure provided by the statute is for the Commission to apply to the court for an order. The situation is the same as if the witness were to refuse to answer a question before a grand jury. The grand jury can not punish for contempt, but sends the witness to the court with a statement of the questions asked and of the refusal of the witness to answer. If the court in such a case orders a witness to answer the questions propounded by a grand jury, such an order would not be appealable. By what process of reasoning can it be contended that a request by the Commission to the court to require a witness to answer confers greater rights upon the witness than if the witness were testifying before the court as an original proposition? The requirement that the court must make the order is necessitated by the lack of power on the part of the Commission to punish for contempt just as in the grand jury proceedings mentioned. The order of the court requiring a witness to answer is no more final in one case than in the other; it is interlocutory in the one case as in the other, and for the same reasons.

As suggested by the Supreme Court in the *Alexander case* (201 U. S. 121), *supra*, "*Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned*

before a court?" Let the District Court for the Northern District of Illinois "go further and punish the witness for contempt of its order, then arrives a right of review, and this is adequate for his protection without unduly impeding the progress of the case."

Until the District Court shall have entered an order punishing the respondent Ellis for his contumacy, there is, we submit, no basis for the assumption by this court of appellate jurisdiction of the order requiring the production of the evidence in question. Wherefore it is respectfully submitted that the appeal in the instant case should be dismissed.

II.

The orders of the Commission on which the investigation was based were sufficient to authorize the Commission to inquire whether or not Armour Car Lines was being used as a device to procure favors for Armour & Co. from the railroads.

The appellant insists that the orders of the Commission which formed the basis of the investigation in which the Commission sought the testimony which appellant refused to give did not afford any intimation that the Commission proposed to make inquiry as to whether or not Armour & Co. were interested in Armour Car Lines, but a consideration of the original order of the Commission shows that this contention is without foundation. The complaint, as stated by the Commission in that order, was that the "allowances" paid by carriers for the use of private cars and the practices governing the handling and icing of such cars were "unjust, unrea-

sonable, unduly discriminatory, and otherwise in violation of the act to regulate commerce." The charge that the "allowances" paid were unjustly discriminatory clearly implied that those allowances were made to shippers, and the extent of the interest of shippers in the car lines was of the very essence of the inquiry as to whether or not the allowances paid for the use of the cars were unjustly discriminatory.

In *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, this court said:

The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law, where a strict correspondence is required between allegation and proof.

But even if the orders of the Commission had been too general to give notice that the purpose was to inquire into the actual ownership of the private car lines, that objection would not be available here, for the reason that counsel did not assign that as a reason for advising appellant not to give the information asked. The sole reason given for the advice of counsel to the witness not to answer the question was that the Commission had no authority under the act nor under the orders of the Commission to inquire into "the private business and

affairs of Armour Car Lines." The objection raises the general question as to the authority of the Commission to inquire into the matters as to which the witness was asked upon the ground that they are "private," and does not present the objection that the order was not sufficient to give notice that the Commission intended to inquire into the relation of the various car lines to persons who were shippers.

If the Armour Car Lines had made the objection as a party to the proceeding, and had claimed that it was taken by surprise, the Commission would, no doubt, have given it a reasonable time to prepare to meet the issue. Such investigations usually cover a considerable period of time, and there is not the same reason for that strict correspondence between allegation and proof that is required in court proceedings where time can not well be given to a party to meet unexpected issues.

III.

The investigation in which appellant was called as a witness related to specific matters which might be made the object of a formal complaint, and was therefore one in which witnesses could be required to testify.

The first section of the act defines "transportation" as including "cars, and other vehicles, and all instrumentalities and facilities of shipment or carriage, and all services in connection with the ventilation, refrigeration, or icing of property transported." By the same section and in the same

sentence, it is provided that it shall be the duty of every common carrier to furnish "such transportation" upon reasonable request therefor, and by a separate paragraph of the section it is provided that "all charges made for any service rendered or to be rendered in the transportation of passengers or property" shall be just and reasonable, and "every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful." It will be noted that this clause is not directed against common carriers or against any particular person, but against the prohibited act itself without regard to the person by whom it may be committed.

Section 12 gives authority to the Commission to inquire into the management of the business of all common carriers subject to the act, and provides that "for the purposes of this act" the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and "the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation." By the same section the Commission is also authorized to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents. Section 13 of the act provides for complaints against common carriers. No authority seems to be given to the Commission by the original act, therefore, to entertain formal complaints against persons other than common carriers.

The defect in the original act in failing to provide for complaints against persons other than common carriers was remedied by section 2 of the amendment of February 19, 1903, known as the Elkins Act, which reads as follows:

That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceeding be instituted before the Interstate Commerce Commission, or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Pursuant to the provisions of the act as thus amended, Armour & Co. and Armour Car Lines were made parties to the investigation in which appellant was called as a witness, and were duly served with copies of the orders of the Commission which formed the basis of the investigation.

By section 2 of the act to regulate commerce it is provided:

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater

or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

By section 1 of the Elkins Act, it is provided that it shall be unlawful for "any person, persons or corporation" to offer, grant or give, or to solicit, accept or receive any rebate, concession or discrimination "in respect to" the transportation of any property in interstate or foreign commerce by any common carrier subject to the act whereby any "advantage is given or discrimination is practiced."

Section 15 of the original act contains the following provision:

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered, or for the use of the instrumen-

tality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

One of the purposes of the investigation in question was to ascertain whether or not there was unjust discrimination resulting from a violation of any of these various provisions.

The case of *Harriman v. Interstate Commerce Commission* 211 U. S. 407, upon which counsel for appellant chiefly rely, was based upon the sole ground that the matter which the Commission was investigating when it sought to compel the witness to testify was not a "specific matter that might be made the object of a complaint." The relevancy of the testimony sought did not enter into the inquiry. The court held merely that the purpose for which the investigation was being made was not one of the purposes for which the Commission had the power to compel witnesses to testify.

That the Commission in this case, under orders duly served on the railroads, on Armour Car Lines, and on Armour & Co., was investigating the reasonableness of allowances paid by carriers for the use of private cars, and of the practices governing the handling and icing of such cars, and also inquiring whether or not such allowances and practices were unjustly discriminatory, and amounted to rebates to Armour & Co., shippers of freight, is admitted, and that these were specific matters which might be made

the object of a complaint under sections 1, 2, 3, 13, and 15 of the act can not be denied. It is clear, therefore, that the *Harriman Case* can have no application here.

IV.

The information which the witness was asked to give was relevant to the inquiry which the Commission was making.

Some of the car lines are controlled by large shippers, others are controlled by the railroads, and others are entirely independent.

It appears that in some cases the shippers deal directly with the car lines for the use of their cars while in other cases they deal with the railroads alone for the use of such cars. One of the practices of which complaint is made is that some of the larger shippers through contracts with the car lines are able to procure the exclusive use of their best cars, leaving only inferior cars for the use of those shippers who procure their cars through the railroads, which, having no special equipment of their own, must take for their shippers what the car lines have to offer them, such shippers being required, the complaint implies, to pay for the use of the inferior cars at least as much as their competitors pay for the newer and better cars which they obtain by their contracts with the car lines. (Record, pp. 11, 21, 76, 78.) Complaint is also made that shippers who are interested in the car lines and in the icing stations which they maintain are able to and do give their own shipments the preference over the shipments of other

persons in the matter of icing cars. (Record, pp. 42, 59, 70.) It also appears that when complaints are made by shippers to the railroads that their shipments are not properly iced and handled the railroads make answer that they are not able to furnish a detailed icing record because this information is not furnished by the car lines. (Record, p. 76.) All these things emphasize the fact that it would be impossible for the Commission to prevent discrimination if it could not inquire very closely into the relations existing between shippers and the car lines.

No argument is needed to show that the questions relating directly to the interest of Armour & Co. in Armour Car Lines was relevant. It appears that Armour & Co. are shippers who use the cars of the Armour Car Lines and also the refrigeration and icing service of that company, and that in some cases Armour Car Lines deal directly with Armour & Co. (Record, pp. 13, 93). For the use of the cars of Armour Car Lines and for the refrigeration and icing service of that corporation the carriers make certain allowances. It also appears that prior to March, 1901, Armour & Co. and Armour Packing Company owned refrigerator cars which were operated by them in another corporate name, but Armour Car Lines was then organized and acquired title to the cars, but how that was done the witness refused to state. (Record, p. 91.) If Armour & Co. directly or indirectly owns or controls Armour Car Lines, allowances made to Armour Car Lines are allowances made to

Armor & Co., and if these allowances are unreasonable, the act is violated.

The various items of debit and credit which entered into the accounts and also the net result of the operations of the company were all material as bearing on the cost of the services furnished, while the value of the property used in performing the services was important to show the return upon the investment, as that return, if excessive, would tend to show that all the charges were extortionate, and that the allowances made to Armour Car Lines were resulting in unjust discrimination.

Counsel rely on the case of *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, 95, to show that the aggregate profits of Armour Car Lines are not a factor in determining the reasonableness of its rates. Counsel seem to have overlooked the fact that the language which they quote from the opinion of Mr. Justice Brewer in that case was not the language of the court. Six of the justices refused to concur in that reasoning of Mr. Justice Brewer and placed their concurrence in the reversal of the judgment of the lower court upon an entirely different ground. Besides, in a later part of this opinion Mr. Justice Brewer used language very materially qualifying that quoted. Referring to the opinion of Lord Chancellor Selborne in the case of *Canada Southern Railway Co. v. International Bridge Co.*, 8 App. Cases, 723, 731, Mr. Justice Brewer said (p. 97):

Of course, it may sometimes be, as suggested in the opinion of Lord Chancellor Selborne,

that the amount of aggregate profits may be a factor in considering the question of the reasonableness of the charges, but it is only one factor, and is not that which finally determines the question of reasonableness. Now, the controversy in the Circuit Court proceeded upon the theory that the aggregate of profits was the pivotal fact. To that the testimony was adduced, upon it the findings of the master were made, and in recognition of that fact the opinion of the court was announced. Obviously, as we think, in all this the lines of the inquiry were too narrowly pursued.

Therefore, Mr. Justice Brewer's opinion distinctly upholds our contention here. There is nothing whatever in the record to indicate that the Commission proposed to make the aggregate profits of the corporation the pivotal fact, but the Commission, no doubt, recognized the difficulty of determining the reasonableness of the allowances in question by comparisons, and therefore felt it to be its duty to consider all the facts which might properly enter into the solution of the problem. If the Commission should fix the amount of these allowances, and Armour Car Lines should attack the allowances fixed as confiscatory, they would have the right to show the return which the rates would yield to be so low as to be confiscatory, and for that purpose would have the right to show the value of their property employed in the business and their aggregate profits. That being true, the Commission is entitled to this information in advance so that it may avoid fixing the allowances

so low as to be confiscatory. The aggregate of the profits may be in some cases as important in determining whether or not a single rate would be confiscatory as it is in determining whether the entire body of a carrier's rates would be confiscatory. *Northern Pacific Ry. Co. v. State of North Dakota*, opinion of Mr. Justice Hughes March 8, 1915. It is true that the Commission may have no power here except to determine whether or not the allowances are so unreasonable as to amount to rebates, and to fix allowances for the future which will not be subject to that objection, but allowances so fixed might be attacked as confiscatory.

Counsel say that if the Commission can inquire as to the cost of the cars furnished by Armour Car Lines and require that company to make a financial statement showing the result of its operations, the Commission may require every person who sells an engine to an interstate carrier to make a like statement. The cases, however, are quite different. No specific charge is made for the use of engines and an engine is not ordinarily set apart for a particular service for which a distinct charge is made. In the case of refrigerator cars, however, a separate charge is made for the use of the car, and it is impossible to determine the reasonableness of the charge unless the value of the car is known. The cars are of a peculiar type and unless their cost can be ascertained together with the profit from the manufacture and rental, it will be difficult to determine what would be a reasonable rental for them. The furnishing of

these cars and of refrigeration and icing service is a part of transportation which the act requires the railroads to furnish and which it was contemplated they probably would furnish through private car companies and differs materially from the furnishing of things which are not defined as "transportation."

But the details of the accounts were also important as bearing on the preliminary question as to the interest of Armour & Co. in Armour Car Lines. It is quite possible that such evidence would show an intermingling of the business of the two corporations which would go far toward establishing the fact that it is a matter of indifference to the stockholders whether their profits come from the one corporation or the other, and thus show that the two corporations are substantially one. As long, therefore, as the identity of the two corporations is not admitted, the items which enter into the accounts of the Armour Car Lines are of the greatest importance for the purpose of enabling the Commission to reach a correct conclusion as to whether or not the two corporations are for all material purposes the same, or as to whether or not Armour & Co. is receiving through Armour Car Lines some concession which amounts to a rebate. If the testimony would have a legitimate bearing on the question to be determined it may be compelled. In *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 47, where this court held that the production of contracts which might tend to show a pooling of freights, in violation of the fifth

section of the commerce act, could be compelled, the court by Mr. Justice Day said:

While this testimony may not establish such an arrangement as is suggested, it has, in our opinion, a legitimate bearing upon the question. There is a division of freight among several railroads, where by agreement or otherwise, the companies have a common interest in the source from which it is obtained. Furthermore, we think the testimony competent as bearing upon the manner in which transportation rates are fixed, in view of determining the question of reasonableness of rates, into which the Commission has a right to inquire. To unreasonably hamper the Commission by narrowing its field of inquiry beyond the requirements of the due protection of rights of citizens will be to seriously impair its usefulness and prevent a realization of the salutary purposes for which it was established by Congress.

Nelson v. United States, 201 U. S. 92, was a proceeding to compel the officers of the General Paper Company and other corporations to answer questions propounded to them as witnesses in a proceeding brought by the United States in the United States Circuit Court for the District of Minnesota to annul certain contracts and agreements between the corporations referred to upon the ground that those contracts and agreements were entered into pursuant to a conspiracy in restraint of trade in violation of the anti-trust act of July 2, 1890, the General Paper Company being organized by the other corporations,

as was alleged, for the purpose of carrying out that conspiracy. The witnesses were required by the trial court to produce and to answer certain questions as to the contents of the account books of the several corporations showing among other things "the amounts and proportions of earnings or profits of the paper company received by the respective companies from and through the paper company either in the form of rebates, credits, or otherwise." Holding that the witnesses were properly required to produce the account books and to answer the questions relating to their contents, this court said (p. 112):

The questions were framed to prove the combination charged in the bill and the powers and operation of the General Paper Co. and the relations of the other companies to it. What the answers will show we do not know, nor what the books and documents will disclose. The organization of the paper company had a purpose, and whether it was a legal or illegal instrument for competing companies to use we do not have now to determine. By the admissions of the answers the paper company entered into contracts with those companies, became their selling agent, and was entitled to a certain percentage of the sales. Presumably it exercised its powers, made sales and received profits. In all that it did the manufacturing corporations were interested; they owned its stock, were entitled to its dividends. This we may admit for argument's sake, not prejudging in any way, may be consistent with continued competition

between the companies, but it may be otherwise. At any rate, the manner in which the paper company executed its functions may be links in the evidence adduced by the United States, and this is enough to establish the materiality of the evidence.

The Armour Car Lines, as we have seen, was a proper party to the investigation in which appellant was called as a witness, but even if that corporation had not been a party to the investigation, that fact would not have entitled it to claim that it could not be required to expose its business affairs if such exposure was necessary to enable the Commission to determine the reasonableness of the allowances made to it by the carriers.

By section 15 of the act the Commission has power to inquire into any device whatsoever which it believes is being used by a shipper to procure from a carrier an excessive allowance for the furnishing of cars or refrigeration in connection with interstate transportation; and such an allowance may be procured by a shipper through the control of a private car line just as effectually as through the control of a tap line. Therefore, what this court said in the *Tap Line cases*, 234 U. S. 1, 28, is in point here. The court, by Mr. Justice Day, there said:

It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines, and in their dealings with other carriers which have resulted in unfair advantages

to the owners of some tap lines and to discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers; as well of proprietary as nonproprietary traffic, and as such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

Surely the facts which the Commission was seeking to elicit here were relevant for the purpose of showing that Armour & Co. were "indirectly" receiving rebates and concessions which were unlawful, as well as for the purpose of showing what would

be reasonable charges for the services in question and what would be reasonable practices relating thereto.

It may be said that the tap lines are common carriers and that for that reason the Commission has jurisdiction over them, while the Armour Car Lines is not a common carrier, and that this distinguishes the *Tap Line cases* from this case. Conceding for the purpose of the argument merely that the Armour Car Lines is not a common carrier, there is no substantial ground for distinguishing the cases for the reason that the authority of the Commission to inquire into the allowance made to the tap line is not based upon the fact that it is a common carrier, but upon the fact that it is owned by a shipper. It is true the Commission has jurisdiction of the tap line as a common carrier, but by virtue of section 2 of the Elkins Act it also has jurisdiction of the Armour Car Lines as a party "interested in or affected by" the rate or practice, and may make orders against it "in the same manner and to the same extent as if it were a common carrier."

The case of *United States v. Union Stock Yard Co.*, 226 U. S. 286, shows that the court will not permit either carrier or shipper by any device whatsoever to violate the provisions of the act prohibiting unjust discrimination. The court in that case, in an opinion by Mr. Justice Day, held that the Union Stock Yard & Transit Co. of Chicago, which owned a railroad, did not exempt itself from the operation of the act to regulate commerce by leasing its railroad and

equipment to an operating company, the profits of which it shared, both companies being under a common stock ownership. The court then held that a contract between the Stock Yard Company and a packing company by which the Stock Yard Company undertook to pay to the packing company a large bonus to locate its plant adjacent to the stock yards of the Stock Yard Company, the packing company agreeing to buy and use in its slaughtering business such live stock only as moved through such stock yards, had the effect to give the packing company an undue advantage over other persons who shipped over the railroad, in the operation of which the Stock Yards Company had an interest, and was therefore in violation of the act. In conclusion the court said (p. 309):

It is the object of the interstate commerce law and the Elkins Act to prevent favoritism by any means or device whatsoever and to prohibit practices which run counter to the purpose of the act to place all shippers upon equal terms.

So here the Commission was authorized to inquire into the relation of Armour & Co. to the Armour Car Lines, the contracts between them, the allowances made by the railroads to Armour Car Lines, and the reasonableness of these allowances, for the purpose of ascertaining whether or not there was any favoritism to Armour & Co. through the Armour Car Lines.

Interstate Commerce Commission v. Reichmann, 145 Fed. 235, was a proceeding by which the Commission

sought the aid of the court to compel a witness to answer a question in an investigation in which the Commission was endeavoring to ascertain how the managers or owners of cars not owned by carriers but employed by them in the interstate transportation of freight conducted their business. An officer of a car line which owned a large number of live-stock cars for the use of which the railroads paid the car line on a mileage basis was called as a witness but refused to answer the following question: "What part of the mileage, or from whatever source, have you given up to shippers during the last six months?" In an elaborate opinion District Judge Landis, the presiding judge, held that the witness should be required to answer the question. After stating that the cardinal purpose of the original act was to bring about absolute uniformity throughout the realm of interstate transportation and that the reason that the act had failed to accomplish that purpose was due primarily to the fact that its prohibitions were aimed at and operated only on carriers, Judge Landis said (p. 239):

Its provisions did not extend to and embrace persons and corporations interested in or concerned with the transportation business other than carriers, and their agents and shippers remained at full liberty to exact from railway companies transportation service at lower rates than were accorded patrons generally. If lower rates were given, the carrier, only, was guilty of an offense. The principal effect of the law seems to have been to require the resort to roundabout methods for the pur-

pose of evading uniformity. The records of the proceedings of the courts and of the Interstate Commerce Commission, during the years succeeding 1887, disclose the employment of a large variety of means to evade the law. One of these was the use of the so-called private car; that is, a car which did not belong to the railway company, but did belong either to the shipper himself or to a corporation which was neither carrier nor shipper, it being generally understood that in the case of the shipper whose traffic went forward in his own car, excessive payments were made to him on the alleged score of mileage, which, in effect brought his transportation cost below the regular rates, and in the case of the shipper whose goods were vehicled in cars belonging to a car company, payments of money, as commissions or otherwise, were made to him by or through the medium of such private car company; the effect of which was to give him the service at a cost below the regular tariff.

These various evasions had developed to such an extent that at the session of 1902-3, Congress set about to devise a plan to put a stop, once for all, to transportation favors. The previous endeavor to accomplish this by penalizing acts of favoritism committed by carriers and their agents having proved abortive, and the experience of 15 years under the original act having demonstrated that if shippers of property were to be placed on an absolute level of equality, additional prohibitory legislation extending to shippers and to persons and corporations beyond or behind

the railway company was necessary, the law of 1903 was enacted.

Judge Landis then quoted from the Elkins Act, and in conclusion said (p. 242):

I am of the opinion that the law prohibits the car company from giving to any shipper of property a favor or advantage not publicly offered to all shippers by the published tariffs issued by the carrier, and therefore that a reply to the question, which the witness refused to answer, would give the Commission information respecting a matter as to which it is charged with the performance of a duty.

It appears from the evidence before the Commission that Armour & Co. and Armour Car Lines have a contract of some kind by which Armour Car Lines undertakes to furnish cars to Armour & Co. (Record, p. 93). But this contract the witness refused to produce. Surely the Commission was entitled to have this contract produced that it might know whether or not Armour Car Lines is making payments to Armour & Co. which would operate as rebates under the principle of the *Reichmann case*.

The case of *United States v. Milwaukee Refrigerator T. Co.*, 145 Fed. 1007, decided by Circuit Judges Grosscup, Baker, Seaman, and Kohlsaat, in an opinion by Circuit Judge Baker, shows that there are other means besides that of stock ownership of a shipper in a car company by which a car company may become, in effect, a shipper, and may procure undue favors from railroad companies in violation of the commerce act. That was a proceeding insti-

tuted by direction of the Attorney General of his own motion to enjoin the Milwaukee Refrigerator Transit Company, a brewing company, and certain railroads as defendants from continuing practices which were claimed to be in violation of the Elkins Act. Discussing the practices of the refrigerator company the court said (p. 1011):

The company owns refrigerator cars which it places at the disposal of railroad companies for use by them in handling certain kinds of traffic, and they pay it rent for the cars in the form of mileage. There is neither averment nor proof which attacks the company in its character of lessor of cars to the railroads.

But, under the conceded facts, as we view them, the refrigerator company in its relations with the railroads appears in another rôle—that of shipper. From the brewing company and other owners of goods intended for interstate and foreign transportation the refrigerator company obtains the exclusive right to route the shipments to all competitive points, and then withholds or gives the business according to the railroad companies' resistance or submission to the threat of diverting the traffic unless a tenth or an eighth of the freight moneys be paid to it. Control of the traffic is as absolute in the refrigerator company as if it were owner, and in numerous transactions the owner is not the shipper. And if an owner, having full dominion in all respects, conveys to another the dominion for transportation purposes, that other in all dealings respecting transportation should be deemed the owner

and shipper. In this case, if the refrigerator company bought the beer, and paid the brewing company's bill less freight, and then collected the beer accounts, and paid the railroads seven-eighths or nine-tenths of the published rates, the granting of a rebate or concession by a carrier to a shipper would not be denied, we take it; and yet, so far as ledger balances and profits of the brewing company, the refrigerator company, and the railroads are concerned, the present method in its results is precisely that.

The foregoing consideration is in answer to defendants' insistence that the Elkins Act touches only the carrier and the shipper. But under the strictest construction (and that the act should be fairly interpreted to effectuate its remedial purposes, see *New York, etc., R. M. Co. v. Interstate Commerce Commission* [U. S. Sup., Feb. 19, 1906], 26 Sup. Ct., 272), we think it was designed to restrain all "parties interested in the traffic."

In section 1:

"It shall be unlawful for any person, persons, or corporation * * * to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce * * * whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier."

In section 2:

"It shall be lawful to include as parties, in addition to the carrier, all persons interested

in or affected by the rate, regulation, or practice under consideration."

And in section 3:

"Upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs * * * by proper orders, writs, and process * * * as well against the parties interested in the traffic as against the carrier."

So, if the refrigerator company be not considered as the shipper, it is at least a "party interested in the traffic."

We do not mean to say that such an arrangement as is there described exists as between Armour & Co., Armour Car Lines, and the railroads, but the case illustrates the importance of giving the Commission some latitude for the purpose of finding out whether that or some other device is being used to defeat the law. It is quite probable that as that particular device has been condemned by the courts it has been avoided, but as the court well said (p. 1013):

The inhibition of "any device whatever" that accomplishes the condemned results is a ban upon invention in this field.

It is immaterial, however, whether or not the testimony was relevant, as a witness can not question the materiality or relevancy of evidence. If it be said that the witness represented the corporation, and that the corporation must be regarded as the witness, the answer is that the same rule applies to the corporation unless the objection made by the witness be regarded as made by the corporation as a

party, but the objection can not be so regarded in view of the fact that the corporation claimed that it was not a party and entered merely a special appearance for the purpose of objecting to the jurisdiction of the Commission.

In *Nelson v. United States*, *supra*, this court said (p. 115):

These writs of error are not prosecuted by the parties in the original suit, but by witnesses, to review a judgment of contempt against them for disobeying orders to testify. Being witnesses merely, it is not open to them to make objections to the testimony. The tendency or effect of the testimony on the issues between the parties is no concern of theirs. The basis of their privilege is different from that and entirely personal, as we shall presently see.

V.

The witnesses who may be compelled by the courts to give testimony before the Commission and to produce documents, books, and papers are not limited to officers and agents of common carriers.

The power of the Commission to require witnesses to testify is not limited to any particular class of witnesses. Any person who probably has information which it is important for the Commission to have in order to reach a correct conclusion relating to a matter which the Commission is expressly charged with the duty of investigating upon formal complaint may be required to give that information in a proceeding duly instituted by the Commission of its

own motion unless he can show some personal reason for not giving the information sought.

In *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 476, this court said:

As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon anyone summoned by that body to appear and to testify, the duty of appearing and testifying, and upon anyone required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the Commission requires at his hands.

It is unlawful for the Armour Car Lines to use its corporate organization in such a way as to procure favors for its stockholders which the act to regulate commerce prohibits them from receiving; and to ascertain whether or not the corporation is violating the law in that way, the Commission must have the right to call upon the officers of the corporation to testify as to who the stockholders are and as to how the corporation is conducting its business.

In *Interstate Commerce Commission v. Brimson*, *supra*, in which the court held section 12 of the act to be constitutional, the lower court had refused to

require the witness to give the testimony sought upon the sole ground that the section was unconstitutional, and this court reversed the judgment, saying that it would not pass upon the relevancy of the questions which the witness had refused to answer until the lower court had done so. In that case the Commission applied to the court to require an officer of the Illinois Steel Co. to produce the stock books of that company and to testify as to the relation of that company to certain railroad companies which it was charged that it had organized for the purpose of procuring certain favors as a shipper. Of course, if the mere fact that the corporation was not itself a common carrier had been a sufficient reason for not requiring its officer to testify as to its affairs or to produce the books of the corporation, the court would have said so, but the court sent the case back, that the lower court might pass upon the materiality of the evidence.

Counsel for appellant insist that the debates of Congress show that car lines were not intended to be regarded as common carriers, and while that is not conceded, yet it is quite clear from the same debates that Congress did not intend to relieve the car lines of any of the obligations which rested upon them, but intended merely that the shippers should have the right to hold the carriers responsible for the service of the car lines, and the right, if they elected to do so, to contract only with the carriers, thus leaving the carriers to deal with the car lines

unless they should elect to perform directly the service usually furnished by those lines. The interests of shippers were uppermost in the mind of Congress, and whatever authority the Commission in the interest of shippers would have had to inquire into the conduct of the business of the car lines if they had been declared to be common carriers, it must be held that it now has unless its power in that respect is clearly limited by the language used.

It is provided that unjust and unreasonable charges for any service expressly declared by the Act to be "transportation" shall be unlawful without regard to whether those charges are made by the carrier or against the carrier. Other sections of the act declare that it shall be unlawful for any common carrier to do certain things, but the first section provides that unreasonable charges for the services named shall be unlawful without regard to the person who makes the charges. When we consider the fact that it was known to Congress that the railroads themselves did not ordinarily furnish special equipment such as refrigerator cars or the service of refrigeration and icing, and were largely at the mercy of private car companies as to the charges made for the use of such equipment and for such services, the reason for the language used is apparent if counsel for appellant are right in their contention that private car lines are not common carriers. Of course, the railroads pass on to shippers whatever charges are made for such special services, and if the Commission is power-

less to ascertain the costs of such services it can not determine what would be reasonable rates therefor, and shippers must suffer.

In *Hale v. Henkel*, 201 U. S. 43, 70, the court, referring to the claim of the agent of a corporation that he could not be compelled to give testimony which might incriminate the corporation, said:

Of what use would it be for the legislature to declare these combinations unlawful if the judicial power may close the door of access to every available source of information upon the subject.

Congress evidently contemplated that the railroads would continue to employ car lines to furnish a part of the transportation service which the railroads were required to furnish, and yet what use was it for Congress to say that the charges made for such services should be reasonable and nondiscriminatory if the door of access to the only available source of information as to the reasonableness of the charges was to be closed? And the question may also well be asked as to the use of providing that shippers shall not receive unreasonable allowances for services furnished by them if a shipper may become the sole stockholder of a corporation organized to furnish the service and receive the allowance without any right on the part of the Commission to inquire into the affairs of that corporation. It seems to be conceded that Congress would have had power to declare car lines to be common carriers and to require them to make reports and to make them subject to all the provisions of the act

to which railroads are subject, and when we look to the reasons given in debate why they should not be declared common carriers, we find that the interest of shippers and not the interest of the car companies was considered paramount, and that the members of Congress who insisted that the car lines should not be named as common carriers had no thought of denying to the Commission the authority to require them to furnish such information as might be necessary to enable it to prevent violations of the act.

It is made clear by the debates quoted by counsel for appellant that it was for the express purpose of meeting the case of the car lines that the word "transportation" was defined as including "cars" and all services in connection with the icing and refrigeration of shipments in transit, and that it was the intention of Congress to give the Commission jurisdiction over these things regardless of the person by whom they might be furnished. Jurisdiction over any part of interstate transportation gives the Commission jurisdiction over the person who furnishes that part of transportation, as to the transportation so furnished, whether or not he be a common carrier. Just as the Commission has jurisdiction over the shipper to the extent that it may be necessary to ascertain whether or not he has violated the commerce act, so it has jurisdiction for the same purpose and to the same extent over any person furnishing interstate transportation against whom a specific complaint has been duly filed, or who is a party to an investigation instituted by the Commis-

sion for the purpose of ascertaining whether or not there has been a violation of the commerce act, to correct which such a complaint properly might have been filed.

VI.

To require the Armour Car Lines or its officer to state what its books show as to the result of its operations relating to its business of renting and leasing cars and furnishing refrigeration and icing service, would not unnecessarily invade the privacy of that corporation.

In 3 Wigmore on Evidence, section 2192, it is said:

When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private. All that society can fairly be expected to concede is that it will not exact this knowledge when necessity does not demand it, or when the benefit gained by exacting it would in general be less valuable than the disadvantage caused; and the various privileges are merely attempts to define the situations in which, by experience, the exaction would be unnecessary or disadvantageous. The duty runs on throughout all, and does not abate; it is merely sometimes not insisted upon.

Again in section 2211 the same author says:

The mere fact that a document concerns the private affairs of the witness or that its disclosure would in his opinion inconvenience him does not create a privilege. The duty to assist the truth (ante sec. 2192) is paramount and indeed presupposes some sort of sacrifice by the witness.

If these principles apply to the private citizen, they apply with much greater force to *quasi* public corporations, or rather they are supplemented and extended in the case of such corporations by the power which both the State and Federal governments have over all corporations, and especially over *quasi* public corporations.

The Armour Car Lines is a corporation created by the State of New Jersey, and Congress has the same authority to require it to give information to the Interstate Commerce Commission for the purpose of enabling that body to determine whether or not the corporation is using its corporate organization to evade any provision of the act to regulate commerce as it would have if the corporation had been created by an act of Congress.

In *Hale v. Henkel*, 201 U. S. 43, 75, which involved the right of the United States, by *subpœna duces tecum* to require the officer of a New Jersey corporation to appear before a federal grand jury and bring with him the books and papers of the corporation, the court said (p. 75):

It is true that the corporation in this case was chartered under the laws of New Jersey, and that it receives its franchise from the the legislature of that State; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of Congress to regulate such commerce, and in respect to this the General Government may also assert a sovereign authority to ascertain whether such

franchises have been exercised in a lawful manner with a due regard to its own laws. Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular in the vindication of its own laws are the same as if the corporation had been created by an act of Congress. It is not intended to intimate, however, that it has a general visitatorial power over State corporations.

In the same case the court said further (p. 76):

Applying the test of reasonableness to the present case, we think the *subpœna duces tecum* is far too sweeping in its terms to be regarded as reasonable. It does not require the production of a single contract, or of contracts with a particular corporation, or a limited number of documents, but all understandings, contracts, or correspondence between the McAndrews & Forbes Co. and no less than six different companies, as well as all reports made and accounts rendered by such companies from the date of the organization of the McAndrews & Forbes Co., as well as all letters received by that company since its organization from more than a dozen different companies situated in seven different States in the Union.

If the writ had required the production of all the books, papers, and documents found in the office of the McAndrews & Forbes Co.,

it would scarcely be more universal in its operation or more completely put a stop to the business of that company. * * * A general subpoena of this description is equally indefensible as a search warrant would be if couched in similar terms.

The court then added (p. 77):

Of course, in view of the power of Congress over interstate commerce to which we have adverted, we do not wish to be understood as holding that an examination of the books of a corporation, if duly authorized by act of Congress, would constitute an unreasonable search and seizure within the fourth amendment.

The reasons given for holding the subpoena issued in that case to be so sweeping as to constitute an unreasonable search or seizure do not apply here. The appellant was not required to bring with him any papers except a copy of one contract specifically described and certain statements to be taken from books of accounts of the corporation. It was not claimed that to produce these papers would involve any considerable amount of labor, or would interfere in any way with the operations of the company. Nor was it claimed that the requests were not sufficiently specific. The statement of counsel for Armour Car Lines of the ground of the objection of that corporation to giving information as to the position which Mr. G. B. Robbins, the president of Armour Car Lines, holds with Armour & Co., which we have already quoted, was referred to as the ground

for refusing to furnish all the information asked, including the documentary evidence referred to.

The sole question is, therefore, whether or not to require the information to be given would invade the privacy of the corporation. Much of what the court said in *Hale v. Henkel*, *supra*, as to the right of the agent of a corporation to claim that he could not be required to open the books of the corporation to a Federal grand jury for the reason that to do so might incriminate the corporation applies with especial force here, although the ground of the objection to giving the information asked differs from the ground of the objection to producing the books and papers which the witness in that case was asked to produce. The court there said (p. 74):

Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of the corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business or to open his doors to an investigation, so far as it may tend to

criminate him. He owes no such duty to the State since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitation of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these franchises had been employed and whether they had been abused, and demand the production of the corporate books and papers for that purpose.

In *Consolidated Rendering Co. v. Vermont*, 207 U. S. 541, the court upheld the power of the state to require a foreign corporation doing business in the state to produce before a grand jury all its books, papers, and correspondence which related to the subject of inquiry, and the court held that this power, of course, embraced the authority to require the giving of testimony by the officers, agents, and other employees of the corporation for like and analogous purposes.

In *Hammond Packing Co. v. Arkansas*, 212 U. S. 322, 348, the court held that the State of Arkansas had the right to compel the production of the books and papers of a foreign corporation doing business in the state, in an investigation to determine whether or not the laws of the state had been complied with, although the books and papers had never been kept within the state.

In *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194, the court, holding that the Commission had power to prescribe how common carriers of interstate commerce should keep their accounts relating to their intrastate business as well as their accounts relating to their interstate business, said (p. 211):

The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corpora-

tions subject to the act, that it may properly regulate such matters as are really within its jurisdiction.

And again in the same case the court said (p. 215):

And it is argued that Congress had no visitatorial power over state corporations. We need not reassert the ample power which the constitution has been construed to confer upon Congress in the regulation of interstate commerce, declared in the many cases in this court from *Gibbons v. Ogden*, 9 Wheaton, 1, to its most recent deliverances. In *Hale v. Henkel*, 201 U. S. 43, 75, while general visitatorial power over state corporations was not asserted to be within the power of Congress, it was, nevertheless, declared as to interstate commerce that the General Government had, in the vindication of its own laws, the same power it would possess if the corporation had been created by act of Congress.

In *Interstate Commerce Commission v. Baird*, *supra*, the court further said (p. 46):

Undoubtedly the courts should protect non-litigants from unnecessary exposure of their business affairs and papers. But it certainly can be no valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it.

Counsel for appellant rely upon the late case of *United States v. Louisville & Nashville R. R. Co.* 236 U. S. 318 in which this court affirmed a judgment of the United States District Court for the Western District of Kentucky refusing a writ of mandamus which

the United States undertook to obtain under authority of section 20 of the act to regulate commerce as amended, 34 Stat. 584, 594, 595. The ground upon which the decision was based was that the power given to the Commission by that section to employ special agents and examiners with authority under order of the Commission to examine "accounts, records, and memoranda" kept by carriers did not give the Commission the right through such agents and examiners to examine the correspondence of the carriers to which the Commission sought access in that case, that correspondence relating to various matters which did not pertain to the provisions of the act to regulate commerce or any other act of Congress the provisions of which it is made the duty of the Interstate Commerce Commission to enforce. The court distinctly said the case did not arise under section 12 of the act to regulate commerce, which deals with the production of evidence before the courts or the Commission, and "does not make provision for inspection by examiners duly authorized by the Commission." As this is a case under section 12 for the production of evidence in a proceeding to enforce specific provisions of the act to regulate commerce, it is difficult to understand wherein the case cited is in point. If this is not a proceeding authorized by section 12, the Commission has no standing in court; and if it is such a proceeding there is not the slightest ground for the contention that the case cited has any application. In connection with that case counsel also comment at length upon the fact

that certain members of the Interstate Commerce Commission appeared before the Senate committee and pleaded for the retention of certain provisions in the so-called Railroad Securities Bill, which it is stated had been introduced in Congress at the instance of the Commission and which had passed the House. By these provisions it was proposed to give the Commission access at all times to all "accounts, records, memoranda, correspondence, documents, papers, and other writings" relating to "financial" transactions kept in the custody or under the control of any person or corporation having had any financial transactions with a common carrier. The powers thus sought had no relation whatever to the right conferred upon the Commission by section 12 to require the production in proceedings before the Commission of "books, papers, and documents," and it is inconceivable that the Commission thought that the provisions of the proposed bill would enlarge its power to require the production of "books, papers, and documents" in such proceedings.

VII.

The services furnished by car lines are furnished by them either as agents for the carriers or as agents for the shippers, and the Commission may investigate the charges for and the practices relating to such services as if such services were furnished directly by the carriers or the shippers.

The act makes it the duty of a common carrier to furnish everything that is defined as transportation. The shipper may relieve the carrier of that duty by

performing some part of the service himself with the consent of the carrier, but if he does so the allowance made to him for that service must be a reasonable one. Every transportation service must, therefore, be regarded as performed either for the carrier or the shipper. If the service is performed for the carrier by an agent or subcontractor, the Commission has the same authority to inquire into the cost of the service that it would have if the service were performed directly by the carrier. Any person who performs a service which it is the duty of the carrier to perform voluntarily submits himself to the jurisdiction of the Commission to the extent that such jurisdiction is necessary to enable the Commission to ascertain what would be a reasonable charge for the service. If the service is performed for the shipper, the Commission has the power to inquire into the cost of the service in order to determine whether or not the allowance made to the shipper is a reasonable one. Whether the car line performs the service for the railroad or the shipper it is a party affected by "the rate, regulation, or practice under consideration" within the meaning of section 2 of the Elkins Act, when such "rate, regulation or practice" is under investigation by the Commission for the purpose of determining whether or not the law has been violated and the Commission may make orders against the car lines to the same extent as it is authorized to do with respect to carriers, provided the car line has been made a party to the proceeding.

Section 1 of the Elkins Act, after prohibiting any device by which any advantage or discrimination is given, provides:

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or shipper acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person.

As the Armour Car Lines furnishes a transportation service which it is the duty of the carrier to furnish, that company must be regarded as performing the service for the carrier within the meaning of this section. The court will not resort to any refined distinctions for the purpose of relieving incorporated car companies from the obligation to give information which it is important for the Commission to have for the purpose of determining whether or not they are violating the law or aiding and abetting either carriers or shippers in doing so.

GENERAL REVIEW OF CASES CITED BY APPELLANT.

Some of the cases cited in the brief for appellant have already been noticed. It is unnecessary separately to comment upon each of the other cases cited. To all of them there is one answer, and that is that they have no bearing on the right of the Commission to require a corporation to furnish information as to its relations with shippers or carriers, or as

to its own accounts, when that information is reasonably necessary to enable the Commission to determine whether or not such corporation or a carrier or shipper with whom it has contractual relations has violated the act to regulate commerce in respect to a matter which might have been made the object of a complaint, and as to which the Commission is conducting an investigation of its own motion for the purpose of making such orders as may be necessary to correct any violations of the act which may be found to exist.

CONCLUSION.

The entire argument for appellant is based upon the assumption of the existence or nonexistence of certain facts when the existence or nonexistence of those facts was the matter in issue before the Commission. Counsel assume that Armour Car Lines is not directly or indirectly interested in the shipments which Armour & Co. makes in its cars, and that the contracts between Armour Car Lines and Armour & Co. could not possibly operate to give Armour & Co. any advantage over any other shipper. They also assume that an inspection of the accounts of Armour Car Lines could not throw any light upon the relations existing between Armour Car Lines and Armour & Co. or between Armour Car Lines and the railroads. All these matters were in issue, and we think the questions asked the witness had a legitimate bearing upon the issues. To hold that the Commission has no right in an investigation in which witnesses may

be compelled to testify to inquire into the affairs of a corporation, which, it is alleged, is owned by a large shipper, and through which that shipper may obtain the equivalent of rebates, and which has no other business than that which relates to transportation, merely because it is not a common carrier and the testimony relates to its "private affairs," would go far towards defeating the purposes for which the Commission was created and would be in direct conflict with the many cases in which this court and other courts have held that the Commission should not be too narrowly constrained in the matter of procuring testimony in investigations for the purpose of ascertaining whether or not specific provisions of the Commerce act have been violated.

An affirmance is asked.

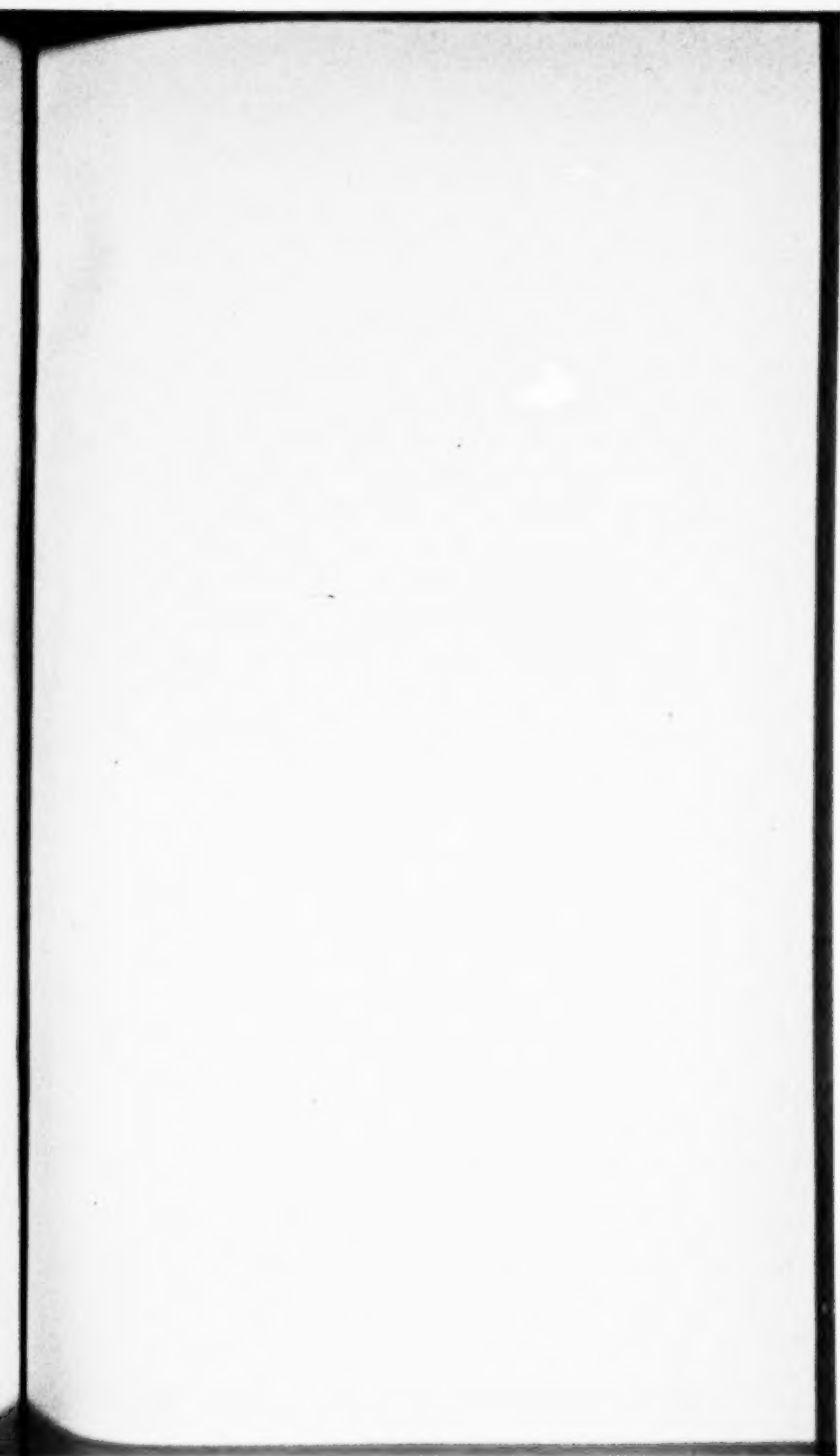
Respectfully submitted.

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Counsel for the Interstate Commerce Commission.





ELLIS *v.* INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 712. Argued April 12, 15, 1915.—Decided May 10, 1915.

The definition of transportation in § 1 of the Act to Regulate Commerce includes the instrumentalities enumerated, but as a preliminary a requirement that the carriers shall furnish them upon reasonable request; the definition does not mean however that the owners and builders of such instrumentalities shall, contrary to truth, be regarded as carriers.

The control of the Interstate Commerce Commission over private cars and such instrumentalities of commerce is effected by its control over the carriers subject to the Act and not over the builders and owners of such instrumentalities who are not subject to the Act.

An appeal lies to this court from a final order of the District Court made upon petition of the Interstate Commerce Commission directing a witness to answer certain questions and produce certain documents. *Interstate Commerce Commission v. Baird*, 194 U. S. 25; *Alexander v. United States*, 201 U. S. 117, distinguished.

The Interstate Commission may not in a mere fishing expedition interrogate a witness in regard to the affairs of a stranger on the chance that something discreditable may be disclosed.

An intervening corporation may be a means by which an owner of property transported incidentally renders services and if so its charges therefor are subject to the supervision of the Commission and, as unreasonable charges may be used as a device to obtain a forbidden end, the Commission should be allowed a reasonable latitude in interrogating a witness in a proper proceeding to ascertain if any such device is used. *Int. Com. Comm. v. Brinson*, 154 U. S. 447.

Every advantage which may enure to a shipper as the result of the position of his plant, his ownership or his wealth is not necessarily a preference within the prohibitions of the Act to Regulate Commerce. In this case *held* that until the corporation, not a carrier, furnishing instrumentalities to shippers was shown to be a mere tool of the latter for obtaining preferences, a witness need not answer questions concerning private business of the corporation, but also *held* that he

237 U. S.

Argument for Appellant.

should answer questions in regard to the furnishing of instrumentalities so far as they affected matters which under § 15 of the Act to Regulate Commerce are subject to the Commission.

THE facts, which involve the construction and application of § 12 of the act to regulate commerce and the power of the court to compel witnesses to answer questions propounded, and to produce documents demanded, by the Interstate Commerce Commission, are stated in the opinion.

Mr. Frank B. Kellogg, with whom *Mr. C. A. Severance*, *Mr. Robert E. Olds*, *Mr. Alfred R. Union* and *Mr. Charles J. Faulkner* were on the brief, for appellant:

Armour Car Lines is not a common carrier, nor is it engaged in transportation, within the meaning of the act to regulate commerce.

The demands of the Commission involved an unwarranted extension of its inquisitorial powers and constitute an unlawful invasion of the private rights and affairs of the respondent and of the company he represents.

The demands involved in this proceeding do not fall within the scope of the Commission's orders.

In support of appellant's contention, see *Baird Case*, 194 U. S. 25; *Balt. & Ohio S. W. Ry. v. Voigt*, 176 U. S. 498; *Boyd v. United States*, 116 S. W. Rep. 616; *Cattle Raisers' Assn. v. Fort Worth Ry.*, 7 I. C. C. 513; *Consolidated Forwarding Co. v. Southern Pac.*, 9 I. C. C. 182, 206; *Cotting v. Kansas City Stockyards*, 183 U. S. 95; *Employers' Liability Cases*, 207 U. S. 463; *Enterprise Transp. Co. v. Penna. R. R.*, 121 I. C. C. 236; *Ex parte Koehler*, 36 Fed. Rep. 867; *Gracie v. Palmer*, 8 Wheat. 605; *Harriman v. Int. Com. Comm.*, 211 U. S. 407; *Hirsch v. New England Nav. Co.*, 113 N. Y. Supp. 395; *Hopkins v. United States*, 171 U. S. 578; *Int. Com. Comm. v. Brimson*, 154 U. S. 447, 448; *Int. Com. Comm. v. Railway Co.*, 167 U. S. 506; *Int. Com. Comm. v. Reichmann*, 145

Fed. Rep. 235; *Kentucky Bridge Co. v. Louis. & Nash. R. R.*, 37 Fed. Rep. 573; *Kilbourn v. Thompson*, 103 U. S. 168; *Lemon v. Pullman Co.*, 52 Fed. Rep. 262; *Long v. Lehigh Valley R. R.*, 130 Fed. Rep. 870; *Nor. Pac. Ry. v. Adams*, 192 U. S. 440; *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S. 324; *Pacific Ry. Comm. Case*, 32 Fed. Rep. 241; *Parmelee Transfer Co.*, 12 I. C. C. 40; *Parmelee v. Lowitz*, 74 Illinois, 116; *Parmelee v. McNulty*, 19 Illinois, 556; *Pullman Co. v. Linke*, 203 Fed. Rep. 1017; *State v. Union Stockyards Co.*, 115 N. W. Rep. 627, 631; *Santa Fe v. Grant Bros.*, 228 U. S. 177; *San Diego v. National City*, 174 U. S. 757; *Smyth v. Ames*, 169 U. S. 546; *Southern Pacific Terminal Co. v. Int. Com. Comm.*, 219 U. S. 498; *Tap Line Cases*, 234 U. S. 1; *Tex. Pac. Ry. v. Abilene Cotton Co.*, 204 U. S. 438; *United States v. Louis. & Nash. R. R.*, 234 U. S. 314; *United States v. Mil. Refrigerator Transit Co.*, 145 Fed. Rep. 1007; *United States v. Union Stockyards*, 226 U. S. 286; *Union Stockyards v. United States*, 169 Fed. Rep. 404.

Armour Car Lines is not a common carrier subject to the act to regulate commerce.

The demands of the Commission amount to an unlawful invasion of the private rights and affairs of the appellant and of the company he represents.

The question is one of power, not of relevancy of evidence. The evidence demanded is not relevant to any legitimate inquiry the Commission may undertake. The Act to Regulate Commerce nowhere provides that railroads shall only pay reasonable compensation for cars, materials, labor, etc. The Government's suggestion of possible rebates is not justified. *Brimson Case*, 154 U. S. 447; *Gracie v. Palmer*, 8 Wheat. 605; *Harriman Case*, 211 U. S. 407; *Louis. & Nash. Case*, 236 U. S. 318; *Pacific Railway Commission Case*, 32 Fed. Rep. 241; *Union Stockyards Co. v. United States*, 169 Fed. Rep. 404; *S. C.*, 226 U. S. 286; 40 Cong. Rec., pt. 2, pp. 1828, 1843-4, 1910, 1997,

237 U. S.

Argument for Appellees.

2004; 40 Cong. Rec., pt. 3, pp. 2020-1; 40 Cong. Rec., pt. 7, p. 6438.

Mr. E. W. Hines, with whom Mr. Joseph W. Folk was on the brief, for appellees:

The order of the District Court requiring Ellis to testify in the proceeding before the Commission is not appealable. *Brimson, Baird, and Harriman Cases* distinguished. Final decrees only are appealable. An order requiring the production of testimony is not a final decree. *Alexander v. United States*, 201 U. S. 117; *Webster Coal Co. v. Cassatt*, 207 U. S. 181; *Wise v. Mills*, 220 U. S. 549; *Haight v. Robinson*, 203 U. S. 581; *Hultberg v. Anderson*, 214 Fed. Rep. 349; *Logan v. Penna. R. R.*, 19 Atl. Rep. 13. Greater rights should not be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court. *Alexander v. United States*, 201 U. S. 117.

The orders of the Commission on which the investigation was based were sufficient to authorize the Commission to inquire whether or not Armour Car Lines was being used as a device to procure favors for Armour & Co. from the railroads.

The purpose of the hearing at which appellant refused to testify, as indicated in the Commission's order providing therefor, was to determine whether or not the allowances paid by carriers for the use of private cars and the practices governing the handling and icing of such cars were unjust, unreasonable, unduly discriminatory, or otherwise in violation of the act. The interest of Armour & Co., and of other shippers, in the car lines furnishing such facilities was of the essence of the inquiry.

Investigations on the part of the Commission should not be hampered by the technical rules of the common law. *Int. Com. Comm. v. Baird*, 194 U. S. 25, 44. As to

questions in issue Armour Car Lines was not taken by surprise.

The investigation in which appellant was called as a witness related to specific matters which might be made the object of a formal complaint, and was therefore one in which witnesses could be required to testify.

See §§ 1, 2, 12, 13, and 15 of the Act to Regulate Commerce and §§ 1 and 2 of the Elkins Act.

The Elkins Act authorized inclusion as parties, "in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration." Armour Car Lines and Armour & Co. were served with copies of the Commission's orders and were made formal parties to the investigation in which appellant refused to testify.

One purpose of the inquiry was to determine whether or not the practices under investigation were resulting in unlawful discrimination. *Harriman v. Int. Com. Comm.*, 211 U. S. 407, distinguished.

The information which the witness was asked to give was relevant to the inquiry which the Commission was making.

The questions in issue were material as tending to show the relation between Armour & Co., the shipper, and Armour Car Lines, the corporation furnishing transportation and refrigeration facilities to common carriers; also as tending to show a practice of rebating under the guise of allowances from common carriers to Armour & Co. through the instrumentality of Armour Car Lines.

Cotting v. Stock Yards Co., 183 U. S. 79, illustrative rather than exclusive of this proposition.

If the questions had a legitimate bearing upon the identity of Armour & Co. and Armour Car Lines, answers thereto were properly to have been compelled. *Int. Com. Comm. v. Baird*, 194 U. S. 25, 47; *Nelson v. United States*, 201 U. S. 92.

237 U. S.

Argument for Appellees.

It is not contended that a corporation selling supplies to a railroad common carrier thereby subjects itself to the jurisdiction of the Commission. The contention is that a shipper may, through a corporation furnishing transportation facilities to such a common carrier, obtain rebates or concessions in the guise of allowances therefor, and that the Commission has jurisdiction to investigate the relations between such shipper and the corporation furnishing such facilities, in order to determine whether or not the latter is being used as a device to conceal rebates.

The questions asked were material as tending to advise the Commission as to the reasonableness of the allowances paid by common carriers for the services rendered by Armour Car Lines. It is the duty of the Commission to abate discriminative practices, "whatever form they may take and in whatsoever guise they may appear." *Tap Line Cases*, 234 U. S. 1.

The power of the Commission to inquire into the allowances of a tap line is based not upon the fact that the tap line is a common carrier, but upon the fact that it is owned by a shipper. A shipper owning a tap line is subject to the jurisdiction of the Commission with respect to the relations between the tap line, the shipper, and railroad common carriers. It is the duty of the Commission to inquire fully into such relations in order to determine whether or not the shipper by means of the tap line is securing concessions from the published rates. *Tap Line Cases*, 234 U. S. 1.

The Elkins Act was designed to place all shippers upon equal terms. *United States v. Union Stock Yards*, 226 U. S. 286; *Int. Com. Comm. v. Reichmann*, 145 Fed. Rep. 235.

A witness, not a party to the proceeding, may not question on behalf of the corporation, a party thereto, the materiality of evidence. *Nelson v. United States*, 201 U. S. 92.

The witnesses who may be compelled by the courts to give testimony before the Commission and to produce documents, books, and papers are not limited to officers and agents of common carriers.

The Commission may require any person to testify before it if the testimony required relates to a matter under investigation, if such matter is one which the Commission is legally entitled to make, and if the witness is not excused on some personal ground from compliance with the Commission's order to testify. *Int. Com. Comm. v. Brimson*, 154 U. S. 447.

Congress, in excluding private car lines from the operation of the statute, was endeavoring to conserve the interests, not of private car lines, but of shippers. Clearly it did not intend thereby to deny to the Commission the power to require such corporations to disclose any information which might be necessary to enable the Commission to enforce the provisions of the act.

Jurisdiction over interstate transportation gives to the Commission jurisdiction over any person furnishing any part of that transportation, as to the transportation so furnished, whether or not such person is a common carrier.

To require Armour Car Lines, or its officer, to state what its books show, as to the result of its operations relating to its business of renting and leasing cars and furnishing refrigeration and icing service, would not unnecessarily invade the privacy of that corporation.

Congress has the same authority to require Armour Car Lines to furnish to the Commission any information which may be necessary to enable it to determine whether or not the act is being violated as it would have if that corporation had been created by an act of Congress. *Hale v. Henkel*, 201 U. S. 43; *Int. Com. Comm. v. Goodrich Transit Co.*, 224 U. S. 194. *United States v. Louis. & Nash. R. R.*, 236 U. S. 318, distinguished.

237 U. S.

Argument for Appellees.

The services furnished by car lines are furnished by them either as agents for the carriers or as agents for the shippers, and the Commission may investigate the charges for and the practices relating to such services as if such services were furnished directly by the carriers or the shippers.

The act requires common carriers to furnish everything defined therein as transportation. A shipper may furnish on behalf of a carrier certain facilities required to be furnished, receiving therefor a reasonable allowance. Any person who performs such a service thereby subjects himself to the jurisdiction of the Commission to the extent necessary to enable the Commission to determine what is a reasonable allowance for the service so rendered.

Armour Car Lines furnish a transportation service which it is the duty of common carriers to provide, and must be regarded as performing that service on behalf of such carriers within the purview of § 1 of the Elkins Act. The jurisdiction of the Commission therefore, for the purposes of this case, extends to Armour Car Lines as fully as if it were a common carrier subject to the act.

The questions propounded to, and which appellant declined to answer and which he was required by the order of the District Court to answer, were material to issues cognizable by the Commission. Answers to such questions, if furnished, might have disclosed a violation of the act to regulate commerce or of the Elkins Act. Appellant not being a party to the proceeding before the Commission, could not properly refuse to answer on the ground of personal privilege, nor could he plead the privilege of the corporation. Armour Car Lines, for the purposes of this proceeding, was as clearly amenable to the inquisitorial jurisdiction of the Commission as if it were a common carrier subject to the act. A reversal by this court of the judgment of the District Court would go far towards defeating the purposes for which the Commission was

created. Wherefore it is respectfully submitted that the order of the District Court requiring appellant to testify and to produce the documents in issue should be sustained.

In support of these contentions see cases *supra*, and also *Brown v. Walker*, 161 U. S. 591; *Canada Southern Ry. v. International Bridge Co.*, 8 App. Cases, 723; *Consol. Rendering Co. v. Vermont*, 207 U. S. 541; *Counselman v. Hitchcock*, 142 U. S. 547; *Gibbons v. Ogden*, 9 Wheaton, 1; *Hammond Packing Co. v. Arkansas*, 212 U. S. 322; *New York &c. R. M. Co. v. Int. Com. Comm.*, 26 Sup. Ct. 272; *Nor. Pac. Ry. v. North Dakota*, 236 U. S. 585; *United States v. Milwaukee Refrigerator Co.*, 145 Fed. Rep. 1007.

Mr. Assistant Attorney General Underwood for the United States.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an appeal from an order of the District Court made upon a petition of the appellee, the Interstate Commerce Commission, filed under the act to regulate commerce, § 12, c. 104, 24 Stat. 379, 383. The order directs the appellant to answer certain questions propounded and to produce certain documents called for by the appellee. There is no doubt that this appeal lies. The order is not like one made to a witness before an examiner or on the stand in the course of a proceeding *inter alios* in court. *Alexander v. United States*, 201 U. S. 117. It is the end of a proceeding begun against the witness. *Interstate Commerce Commission v. Baird*, 194 U. S. 25. Therefore, we pass at once to the statement of the case.

The Interstate Commerce Commission, reciting that it appeared from complaint on file that the allowances paid for the use of private cars, the practices governing the handling and icing of such cars, and the minimum carload weights applicable to the commodities shipped

237 U. S.

Opinion of the Court.

therein, on the part of carriers subject to the act to regulate commerce, violated that act in various ways, ordered that a proceeding of investigation be instituted by the Commission of its own motion to determine whether such allowances, practices, or minimum carload weights were in violation of the act as alleged, with a view to issuing such orders as might be necessary to correct discriminations and make applicable reasonable weights. It ordered that carriers by railroad subject to the act be made parties respondent, and, later, that all persons and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce be made parties also. In the proceedings thus ordered the questions propounded were put to the appellant, the vice president and general manager of the Armour Car Lines.

The Armour Car Lines is a New Jersey corporation that owns, manufactures and maintains refrigerator, tank and box cars, and that lets these cars to the railroad or to shippers. It also owns and operates icing stations on various lines of railway, and from these ices and re-ices the cars, when set by the railroads at the icing plant, by filling the bunkers from the top, after which the railroads remove the cars. The railroads pay a certain rate per ton, and charge the shipper according to tariffs on file with the Commission. Finally it furnishes cars for the shipment of perishable fruits, &c., and keeps them iced, the railroads paying for the same. It has no control over motive power or over the movement of the cars that it furnishes as above, and in short, notwithstanding some argument to the contrary, is not a common carrier subject to the act. It is true that the definition of transportation in § 1 of the act includes such instrumentalities as the Armour Car Lines lets to the railroads. But the definition is a preliminary to a requirement that the carriers shall furnish them upon reasonable request,

not that the owners and builders shall be regarded as carriers, contrary to the truth. The control of the Commission over private cars, &c., is to be effected by its control over the railroads that are subject to the act. The railroads may be made answerable for what they hire from the Armour Car Lines, if they would not be otherwise, but that does not affect the nature of the Armour Car Lines itself. The petition of the Interstate Commerce Commission to compel an answer to its questions hardly goes on any such ground.

The ground of the petition is that it became the duty of the Commission to ascertain whether Armour & Company, an Illinois corporation shipping packing-house products in commerce among the States, was controlling Armour Car Lines and using it as a device to obtain concessions from the published rates of transportation, and whether Armour Car Lines was receiving for its refrigerating services unreasonable compensation that enured to the benefit of Armour & Co., all in violation of §§ 1, 2, 3, and 15 of the act.

If the price paid to the Armour Car Lines was made the cover for a rebate to Armour & Co., or if better cars were given to Armour & Co. than to others, or if, in short, the act was violated, the railroads are responsible on proof of the fact. But the only relation that is subject to the Commission is that between the railroads and the shippers. It does not matter to the responsibility of the roads whether they own or simply control the facilities, or whether they pay a greater or less price to their lessor. It was argued that the Commission might look into the profits and losses of the Armour Car Lines (one of the matters inquired about), in order to avoid fixing allowances to it at a confiscatory rate. But the Commission fixes nothing as to the Armour Car Lines except under § 15 in the event of which we shall speak.

The appellant's refusal to answer the series of questions

237 U. S.

Opinion of the Court.

put was not based upon any objection to giving much of the information sought, but on the ground that the counsel who put them avowed that they were the beginning of an attempt to go into the whole business of the Armour Car Lines—a fishing expedition into the affairs of a stranger for the chance that something discreditable might turn up. This was beyond the powers of the Commission. *In re Pacific Railway Commission*, 32 Fed. Rep. 241. *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 478, 479. *Harriman v. Interstate Commerce Commission*, 211 U. S. 407. The Armour Car Lines not being subject to regulation by the Commission its position was simply that of a witness interested in but a stranger to the inquiry, and the Commission could not enlarge its powers by making the Company a party to the proceedings and serving it with notice. Therefore the matter to be considered here, subject to the qualification that we are about to state, is how far an ordinary witness could be required to answer the questions that are before the court.

We have stated the nature and object of the investigation, and it is to be observed that not every advantage that may enure to a shipper as the result of the position of his plant, his ownership or his wealth is a preference. *Interstate Commerce Commission v. Duffenbaugh*, 222 U. S. 42, 46. But the intervening corporation may be a means by which an owner of property transported indirectly renders the services in question, and in that event its charges are subject to the Commission by § 15. The supposed unreasonable charge may be used as a device to attain the forbidden end and therefore reasonable latitude should be allowed to see if any such device is used. *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 464. But still until Armour Car Lines is shown to be merely the tool of Armour & Company it has the general immunities that we have stated. With the

foregoing general principles in view we proceed to dispose of the questions asked.

It is not necessary to repeat the many pages of questions at length. They are grouped by the Government into classes and numbered so that the result may be stated in comparatively few words. The first group concerning interlocking officers and relations between Armour Car Lines, Armour & Company and Fowler Packing Company, questions 1, 2, 3 and 7, should be answered. The only objection was on account of the general intent avowed as we have stated. So also questions 4, 5, 6, concerning the acquirement of cars previously owned by Armour and Company and Armour Packing Co., making the second group. Also questions 8, 9, 12 and 13, as to contracts of Armour Car Lines with Armour & Company and Colorado Packing Company for furnishing cars and icing service. The next group, so far as the questions concern the ownership, manufacture and repair of cars, Nos. 10, 11, 14, 16, 17 and 19, need not be answered, except 11 "where are the cars of Armour Car Lines repaired when not repaired in shops of railroads?" The last two groups concern matters into which the Commission was not authorized to inquire. The fifth, questions 15, 20, 21, 25, 26, 27, and 28, called for statements showing profit and loss, credits and debits to income &c., so far as the same related to transportation as defined in the act; and the sixth, Nos. 22, 23, and 24, for statements showing the amount invested in each icing plant and the detailed results of the operation of each, amount invested in each, cost per ton of ice at the source of supply &c., &c., all matters belonging to the private business of the Armour Car Lines and not open if our interpretation of the law is correct. Our decision, however, must be without prejudice to the possibility that the case may be brought within § 15 by evidence to the effect stated above.

Decree reversed without prejudice.

237 U. S.

Syllabus.

MR. JUSTICE DAY, while not differing from the general views taken by the court, is of opinion that the nature of the inquiry under § 15 made it proper that all the questions should be answered.

MR. JUSTICE McREYNOLDS took no part in the consideration or decision of this case.
